

1 UNITED STATES DISTRICT COURT FOR  
2 THE DISTRICT OF MASSACHUSETTS

3  
4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 vs.

7  
8 PAUL HICKS,

9 Defendant.

)  
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)  
) Criminal Action  
) No. 05-10204-GAO  
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11 TRANSCRIPT OF JURY TRIAL  
12 DAY FOUR

13  
14 BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.  
15 UNITED STATES DISTRICT JUDGE

16 United States District Court  
17 John J. Moakley U.S. Courthouse  
18 1 Courthouse Way  
19 Boston, Massachusetts 02210  
20 October 19, 2006  
21 9:20 a.m.

22 \* \* \* \* \*

23 SHELLY M. KILLIAN, RPR, CM, CRR  
24 Official Court Reporter  
25 John J. Moakley U.S. Courthouse  
1 Courthouse Way, Room 3510  
Boston, MA 02210  
(617) 737-7117

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## 1 P R O C E E D I N G S

2 (The following proceedings were held in open  
3 court before the Honorable George A. O'Toole, Jr.,  
4 United States District Judge, United States District  
5 Court, District of Massachusetts, at the John J. Moakley  
6 United States Courthouse, 1 Courthouse Way, Boston,  
7 Massachusetts, on October 19, 2006.)

8 The defendant, Paul Hicks, is present with  
9 counsel. Assistant U.S. Attorney Jonathan Mitchell is  
10 present.)

11 THE CLERK: All rise.

12 (Jury entered courtroom, 9:24 a.m.)

13 THE CLERK: Please be seated.

14 THE COURT: Good morning, jurors.

15 Do you have the witness?

16 MR. MITCHELL: Yes, your Honor. Please resume  
17 the stand.

18 (Dean LeVangie, previously sworn, resumed  
19 stand.)

20 MR. KROWSKI: Good morning, your Honor. May I  
21 proceed?

22 THE COURT: Please.

23 MR. KROWSKI: Thank you.

24 CROSS-EXAMINATION

25 BY MR. KROWSKI:

1 Q. Good morning, Trooper LeVangie.

2 A. Good morning, sir.

3 Q. You testified yesterday to some extent about your  
4 vast experience, correct?

5 A. Yes, sir.

6 Q. Dealing with narcotics cases, correct?

7 A. Correct.

8 Q. Dealing with narcotics cases in the city of  
9 Brockton, Massachusetts?

10 A. Yes, sir.

11 Q. As a member of the Massachusetts State Police?

12 A. Correct.

13 Q. As a member of the Massachusetts State Police, many  
14 times your investigations -- in your investigations you  
15 work with members of the Brockton police?

16 A. That's correct.

17 Q. The witnesses in this case, you're aware of who they  
18 are, correct?

19 A. Yes, sir.

20 Q. Trooper Long?

21 A. Yes, sir.

22 Q. You've worked with him many times in the past,  
23 correct?

24 A. Correct.

25 Q. Detective Keating, you've worked with him?

1 A. Yes, sir.

2 Q. Detective Costello, you've worked with him?

3 A. Correct.

4 Q. These are colleagues of yours?

5 A. Yes, sir.

6 Q. And they're also friends of yours, correct?

7 A. Some of them, yes, sir.

8 Q. Now, the way this works is you weren't part of this  
9 actual investigation, were you?

10 A. Partly, yes, sir.

11 Q. But ultimately it was Trooper Long's investigation?

12 A. Correct.

13 Q. At some point you get contacted that they want you  
14 to give your opinion based upon your experience here in  
15 court, correct?

16 A. Yes, sir.

17 Q. That's something you've been asked to do before,  
18 correct?

19 A. Yes, sir.

20 Q. And you know the opinion you gave yesterday is  
21 favorable to the government, correct?

22 A. Yes, sir.

23 Q. How many times have you testified in court?

24 A. Well in excess of 300 times, sir.

25 Q. In those 300 times, have you ever testified in a way

1 that wasn't favorable to the government?

2 A. Not that I can recall, no, sir.

3 Q. So your track record is 100 percent of the times  
4 that you testify, you give an opinion that's favorable  
5 to the government, to the prosecutor, correct?

6 A. Yes, sir.

7 Q. And to your colleagues, correct?

8 A. Yes, sir.

9 Q. And to base that opinion on anything, you're told  
10 what the facts of a specific case are, correct?

11 A. Correct.

12 Q. So before you gave that profile testimony to the  
13 jury yesterday about defendants securing themselves with  
14 weapons, you had already been told that bullets were  
15 found at the location, correct? You knew that?

16 A. Yes, sir.

17 Q. Before yesterday you came in and said, well, drug  
18 dealers will often lend their guns out. You had already  
19 been told that a gun wasn't found, correct?

20 A. Correct.

21 Q. When yesterday you said, Well, sometimes there's  
22 cash and money found at a residence, you had already  
23 been told that the defendant -- or excuse me, that there  
24 was cash found in a pocket at the house, correct?

25 A. Correct.

1 Q. You heard a telephone conversation from a year  
2 before the alleged incident, correct?

3 A. Yes, sir.

4 Q. That was Mr. Hicks calling Miss Yarrell?

5 A. Correct.

6 Q. You said yesterday that they will secure money to do  
7 things such as hire a lawyer, correct?

8 A. Yes, sir.

9 Q. You had already -- before you gave that opinion  
10 yesterday, you had already given that opinion -- excuse  
11 me, you had already heard the taped call and the part  
12 about get a thousand dollars to the lawyer, correct?

13 A. Yes, sir.

14 Q. Now, in Brockton there is no way to pigeon hole drug  
15 activity, correct?

16 A. I'm not sure what you mean by pigeon hole.

17 Q. Let me put it broadly. The drug trade in that city  
18 is not limited to any one race of individuals?

19 A. Correct.

20 Q. Any one age of individuals?

21 A. Correct.

22 Q. Any one gender of individuals?

23 A. Correct.

24 Q. There's a large Cape Verdean population in Brockton,  
25 correct?



1 A. That's correct.

2 Q. A Caucasian population?

3 A. Yes, sir.

4 Q. An African-American population?

5 A. Yes, sir.

6 Q. Dominican population?

7 A. Yes, sir.

8 Q. Puerto Rican population?

9 A. Correct.

10 Q. Now, in Brockton there are different types of drug  
11 dealing activities, correct?

12 A. Yes, sir.

13 Q. There's the rudimentary, basic street-level  
14 transaction, correct?

15 A. Yes, sir.

16 Q. You might have a small person on the corner of North  
17 Main Street stick out a small bag out of his hand, hand  
18 it to an undercover and receive money for it, correct?

19 A. Possible, yes, sir.

20 Q. There's the more sophisticated services, correct?

21 A. Yes, sir.

22 Q. A delivery service is a more sophisticated service,  
23 is it not?

24 A. Yes, sir.

25 Q. In your training and experience, people in a

1 delivery service go through great pains to insulate  
2 themselves, correct?

3 A. Often times, yes, sir.

4 Q. Because they know if they ever do get caught or  
5 there is a search warrant, they have to take certain  
6 precautions, correct?

7 A. Correct.

8 Q. One of the things is typically a person will put  
9 utility bills in someone else's name, correct?

10 A. Can be, yes, sir.

11 Q. They will put phone bills in someone else's name?

12 A. Possibly, yes, sir.

13 Q. They will put cell phone bills in someone else's  
14 name?

15 A. Yes, sir.

16 Q. You looked at a -- an exhibit yesterday,  
17 Government's Exhibit No. 4, the Nextel cell phone  
18 records, correct?

19 A. No, sir, I never saw that.

20 Q. Have you seen them before?

21 A. Yes, sir.

22 Q. You saw the Nextel cell phone that purportedly  
23 belonged to Mr. Hicks?

24 A. Correct.

25 Q. And before you gave that opinion about those short

1 one-minute calls taking place, you were already aware  
2 that on the phone bill of the phone that purportedly  
3 belonged to Mr. Hicks there was a hundred plus calls  
4 over a two-day period, correct?

5 A. After reviewing that, yes, sir.

6 Q. And you reviewed that before you came in with that  
7 opinion, correct?

8 A. Yes, sir.

9 Q. You use a cell phone, correct?

10 A. Yes, sir.

11 Q. A Nextel?

12 A. Correct.

13 Q. Basically everyone today uses a cell phone, correct,  
14 nothing novel about that?

15 A. Yes, sir.

16 Q. Did you look at that cell phone bill, the Nextel  
17 bill?

18 A. The amount of calls, yes, sir.

19 Q. You're aware that Mr. Hicks was taken into custody  
20 because you did have some part of this case, correct?

21 A. Yes, sir.

22 Q. You're aware that Mr. Hicks was taken into custody  
23 on January 20th, 2005, correct?

24 A. That's correct.

25 Q. How do you account for all the phone calls being

1 made after that date?

2 A. I cannot.

3 Q. Well, it's fair to say because you looked at that  
4 exhibit, there's dozens if not hundreds of phones calls  
5 that were made after he was in custody from that same  
6 cell phone, true?

7 A. I did not see that, sir.

8 MR. KROWSKI: May I have Government's Exhibit  
9 No. 4, please.

10 May I approach, your Honor?

11 THE COURT: You may.

12 BY MR. KROWSKI:

13 Q. Do you need a minute, Trooper?

14 A. Please. (Reviews documents.) Yes, sir.

15 Q. There were calls made after Mr. Hicks was in custody  
16 as well, correct?

17 A. Yes, sir.

18 Q. And in your training and experience, sometimes even  
19 though a cell phone bill is in the name of one person,  
20 someone else could possibly be using it, correct?

21 A. Correct.

22 Q. Now, yesterday you talked about different street  
23 terms. You talked about an eight ball, correct?

24 A. Yes, sir.

25 Q. And that's a common term?

1 A. Correct.

2 Q. Three and a half grams of cocaine?

3 A. Approximately, yes, sir.

4 Q. The term eight ball is derived from it's an eighth  
5 of an ounce, correct?

6 A. Correct.

7 Q. Street value about \$150?

8 A. \$125, 150, yes, sir.

9 Q. A little less than, what, about \$40 a gram?

10 A. Correct.

11 Q. And that's a term that you hear often?

12 A. Yes, sir.

13 Q. A "twist" is a term you hear often, correct?

14 A. Correct.

15 Q. But then you were asked to interpret other terms  
16 such as "little people."

17 A. Correct.

18 Q. When you were asked to interpret little people,  
19 you're just giving an opinion, correct?

20 A. Correct.

21 Q. You heard the conversation, you read the transcript,  
22 and you're assuming what he was talking about when he  
23 said little people, correct?

24 A. Correct.

25 Q. That's not a term you've heard often, correct?

1 A. Little people, no, sir.

2 Q. As a matter of fact, in those 300 cases tell me one  
3 where you heard the term little people mentioned.

4 A. Not one, sir.

5 Q. So that's not some term of art in the drug trade,  
6 "little people," correct?

7 A. No, sir.

8 Q. What about raw food and cooked food?

9 A. Yes, sir.

10 Q. Have you heard that before?

11 A. Yes, sir.

12 Q. Often?

13 A. Several times.

14 Q. Tell me about the last time you testified about  
15 hearing raw food or cooked food.

16 A. I have not testified about it.

17 Q. In all 300 cases?

18 A. Correct.

19 Q. In all 300 cases where you gave that favorable  
20 opinion to your colleagues and the government?

21 A. Correct.

22 Q. And you certainly get paid for your time to come in  
23 here and testify, correct?

24 A. I'm on straight time, sir.

25 Q. Now, you talked yesterday about drug dealers taking

1 security precautions, correct?

2 A. Yes, sir.

3 Q. And those security precautions might be arming  
4 themselves with a firearm?

5 A. Yes, sir.

6 Q. And then they might lend it out to someone, correct?

7 A. Yes, sir.

8 Q. You have no evidence in this case there was ever a  
9 firearm possessed by Mr. Hicks, correct?

10 A. No, sir.

11 Q. No evidence he ever lent one out to anyone, do you?

12 A. No, sir.

13 Q. And you know all that was found in this case were  
14 different calibers of bullets, correct?

15 A. And clips, yes, sir.

16 Q. And clips. Can you name a case that you've had  
17 where you found just bullets and not a firearm?

18 A. Not off the top of my head, no, sir.

19 Q. Can you name one of those 300 times when you  
20 testified favorably to the government that you found  
21 just bullets and not a firearm?

22 A. Not specifically, no, sir.

23 Q. Now, these more sophisticated delivery services  
24 would be a service that would operate out of a home,  
25 true? Or an apartment?

1 A. Possibly, yes, sir.

2 Q. Again, there are great pains, in your experience,  
3 that people take to protect themselves, correct?

4 A. Sometimes, yes, sir.

5 Q. And in your experience, someone that's involved in a  
6 delivery service is going to know what a small,  
7 hand-held digital scale is used for, correct?

8 A. Yes, sir.

9 Q. They're going to know that's a tool of the trade?

10 A. Correct.

11 Q. They're not going to put something with their name  
12 on it smack dab next to something like that, are they?

13 A. I can't answer that.

14 Q. Well, let's talk about your experience then. Those  
15 300 cases -- actually, do you include arrests and  
16 execution of search warrants, thousand cases, correct?

17 A. In excess of 500, yes.

18 Q. In those 500 cases, can you tell me an instance  
19 where someone had a utility bill with their name on it  
20 right next to tools of the trade such as hand-held  
21 digital scales?

22 A. I can testify on numerous occasions of cases where  
23 people had bills in the same locations of where  
24 paraphernalia was located. Yes, sir.

25 Q. Name one.



1 A. 49 Prospect Street.

2 Q. When was that?

3 A. That was probably two, three years ago.

4 Q. So out of those 500 cases, you can give us a case  
5 from two or three years ago with one address?

6 A. Yes, sir.

7 Q. Name another one.

8 A. 600 Warren Avenue.

9 Q. And when was that?

10 A. That was a year and a half ago.

11 Q. So now a year and a half ago. So you can name two.

12 A. I could name others if you'd like.

13 Q. What were the bills that were found?

14 A. I believe one was an electrical bill, may have been  
15 a cell phone bill.

16 Q. What was the name of the defendant?

17 A. One of the defendant's name was Bonilla.

18 Q. What was his first name?

19 A. I don't recall his first name, sir.

20 Q. The point being, again, this is not a science, your  
21 testimony, correct?

22 A. I'm not sure what you mean.

23 Q. Well, you've never written any literature on this  
24 topic, you have?

25 A. No, sir.

1 Q. There's no national or even state or local standards  
2 on this, is there?

3 A. Not that I'm aware of, sir, no.

4 Q. You do go to some continuing education courses,  
5 correct?

6 A. Correct.

7 Q. But there's no guidelines for you to follow, correct?

8 A. Not that I'm aware of, no, sir.

9 Q. You can't read someone's mind?

10 A. No, sir.

11 Q. You don't have any background in psychology?

12 A. No, sir.

13 Q. Every case is different?

14 A. Correct.

15 Q. All people are different?

16 A. Correct.

17 Q. The term "regular friends," have you ever heard that  
18 used before?

19 A. No, sir.

20 Q. So when you were testifying to what it meant to you,  
21 you were guessing, correct?

22 A. Based on the vernacular in that conversation, yes,  
23 sir.

24 Q. But still, even based on that conversation, it was a  
25 guess?

1 A. In my experience I testified as to what that -- what  
2 he's using that term to relay.

3 Q. When was, in those other 500 cases, when have you  
4 heard the term "little people" used?

5 A. Never.

6 Q. Again, that phone conversation also was from January  
7 2004, correct?

8 A. Yes, sir.

9 Q. A year before the date of arrest of Mr. Hicks, which  
10 was January 20th, 2005?

11 A. Correct.

12 Q. And in your experience, people do change, correct?

13 A. Possibly.

14 MR. KROWSKI: I don't have any further  
15 questions, your Honor.

16 MR. MITCHELL: A couple of follow-up  
17 questions, your Honor.

18 REDIRECT EXAMINATION

19 BY MR. MITCHELL:

20 Q. Could you take a look at Government's Exhibit 4,  
21 Trooper LeVangie.

22 A. Yes, sir.

23 Q. Okay. Can you turn to I believe it's the page dated  
24 January 20th, the list of calls on January 20th, may be  
25 the fourth or fifth page.

1 A. Yes, sir.

2 Q. Do you see that?

3 A. Yes, sir.

4 Q. Okay. On January 20th, when was the last call?

5 A. At 6:08 p.m., sir.

6 Q. And when's the next call?

7 A. On January 21st at 3:40 p.m.

8 Q. Okay. And when's the next call after that?

9 A. February 4th.

10 Q. Okay. So more than two weeks go by between the call  
11 on the 21st and the -- what did you say it was, February  
12 5th?

13 A. February 4th, yes, sir.

14 Q. February 4th, excuse me. So two weeks go by  
15 between the one hundred 60-second call and one hundred  
16 60-second third call, correct?

17 A. Correct.

18 Q. In your opinion, when you've executed search  
19 warrants and found cell phones, have you ever  
20 encountered or have you ever seen an investigator use  
21 the cell phone to see who's been calling, who the last  
22 number called was?

23 A. Yes, sir.

24 Q. Okay. Do you recall, again going back to the certs,  
25 the lab certificates you reviewed in this case, was the

1 powder cocaine fully cut based on what you saw in the  
2 certificates?

3 A. Based on my experience, no, it was not.

4 Q. And so there was still product to be added, correct?

5 A. Could be, yes, sir.

6 Q. And when cocaine is cut, on what sort of surface is  
7 it usually cut?

8 A. Any type of flat surface normally, sir.

9 Q. On a table?

10 A. Could be a table. Could be a plate.

11 MR. MITCHELL: That's all I have, your Honor.

12 THE COURT: All right, Trooper, thank you.

13 You may step down.

14 THE WITNESS: Thank you.

15 MR. MITCHELL: Your Honor, the government  
16 rests.

17 THE COURT: Let me see counsel at the side,  
18 please.

19 (Conference at sidebar commenced.)

20 THE COURT: I didn't know whether you wanted  
21 to come over here or not.

22 MR. KROWSKI: I did, your Honor. I'll make an  
23 oral motion at this time under Rule 29, preserve our  
24 rights. I will follow that up with an electronic filed  
25 rewritten motion.

1 THE COURT: Do you want to be heard?

2 MR. KROWSKI: Briefly my argument is that  
3 aside from the prior convictions and the conduct  
4 revealed earlier, they don't have any knowledge or  
5 any -- all they have is mere presence. And even  
6 their -- coupled with knowledge is not enough. Even if  
7 the prior did show knowledge, there's no evidence that  
8 he was still in some sort of working or joint venture  
9 conspiracy with Miss Yarrell at that address, and  
10 there's no connection to the phone conversation, never  
11 mentions anything about gun, bullets or weapons. All he  
12 is is merely present. Even if he knew those bullets  
13 were there, what's the connection to him that he had any  
14 intent to exercise dominion and control over them?

15 MR. MITCHELL: There's plenty of evidence of  
16 both knowledge of and presence of drugs and his  
17 intention to -- besides control over it, his intention  
18 to distribute his drugs.

19 Just by way of summary, your Honor, let's  
20 start with the priors because Mr. Krowski mentioned the  
21 priors do show that he has an MO of selling cocaine.  
22 It's -- his intention was to sell the cocaine as opposed  
23 to consume because that's what he'd done in the past.  
24 And recognize the scales and other paraphernalia because  
25 of his experience as a drug dealer.

1 But above all, he lives and lived in that  
2 house. There were three bedrooms. Two bedrooms were  
3 occupied by children, the other one was occupied by a  
4 girl friend who owned the house. We know they're  
5 boyfriend/girl friend, we've seen in the picture. We  
6 know he was found by himself, the only adult in the  
7 house at the time. He had just gotten out of the  
8 shower. Having to live there like -- someone takes a  
9 shower more likely than not when they live there. He's  
10 seated in a place where his position from his stuff  
11 is -- his cell phone was used, the ammunition which was  
12 used in the drug trade according to Trooper LeVangie.  
13 Money, a large amount of cash found right nearby. We  
14 know that based on the telephone calls, he was to use  
15 his girl friend as someone who was to sell drugs for  
16 him.

17 I could go on, your Honor. But for all those  
18 reasons, based on the Rule 29 standard --

19 THE COURT: The motion's denied.

20 MR. KROWSKI: Your Honor, one other issue. I  
21 know we just got back on. I do have one witness I'm  
22 going to call, but I also want the opportunity after  
23 we're done presenting our evidence and now that the  
24 government's resting to confer with my client on his  
25 constitutional right about testifying. It's something

1 that he wants to talk to me about as well. So I don't  
2 know if I'll be given that opportunity to --

3 THE COURT: I'll give you that, sure. So what  
4 do you have now?

5 MR. KROWSKI: I have Rosemarie Hicks, his  
6 mother.

7 THE COURT: Is she here?

8 MR. KROWSKI: She was in the building when I  
9 called. I haven't personally seen her. But she was  
10 coming up the elevator when I called her from the  
11 hallway. I assume she's outside on the bench. I could  
12 call her but then I want the opportunity to speak with  
13 my client for just five or ten minutes about his right  
14 to testify.

15 THE COURT: All right.

16 Did you coordinate your ties this morning?

17 (Conference at sidebar concluded.)

18 MR. KROWSKI: May I, your Honor?

19 THE COURT: Yeah.

20 MR. KROWSKI: The defendant would call  
21 Rosemarie Hicks.

22 ROSEMARIE HICKS, SWORN

23 THE CLERK: Please be seated. State your  
24 name, spell your last name for the record, speak into  
25 the mic and keep your voice up so everyone can hear you.



1 THE WITNESS: My name is Rosemarie Hicks.

2 R-o-s-e-m-a-r-i-e, H-i-c-k-s.

3 DIRECT EXAMINATION

4 BY MR. KROWSKI:

5 Q. Good morning, Mrs. Hicks. How old are you?

6 A. I'm 55.

7 Q. Where do you live?

8 A. 56 Ithaca Road, Brockton, Mass.

9 Q. Who do you live with?

10 A. With my husband.

11 Q. What's your husband's name?

12 A. Paul Hicks.

13 Q. Where do you work?

14 A. I work for the Massachusetts State Police.

15 Q. Specifically doing what?

16 A. I'm a state trooper.

17 Q. What does Mr. Paul Hicks, Sr. do for work?

18 A. He works for the Boston Fire Department. He's a  
19 fire inspector.

20 Q. How long you have lived at that address of 56 Ithaca  
21 Road in the city of Brockton?

22 A. About approximately nine or ten years.

23 Q. Paul Hicks to my left with the blue pinstripe suit  
24 on is your son?

25 A. Yes, he is.

1 Q. I'm going to take you back to the time of January  
2 2004. Was your son Paul Hicks in jail?

3 A. Yes, he was.

4 Q. Do you remember when he got out of jail?

5 A. I don't remember exactly when he got out of jail,  
6 but I remember when he got out because he came to live  
7 with me.

8 Q. Do you remember approximately what month or what  
9 time of year that was? If you remember.

10 A. I want to say the weather was kind of good. I  
11 really don't remember the date. I really don't remember  
12 because --

13 (Court reporter interrupts.)

14 A. I said I had a son that had died in 2003, so my  
15 dates with things -- and I have a very sick son that I  
16 keep up with a lot. And in between trying to keep up  
17 with everybody, I do not get to keep dates in my head.  
18 And that's why.

19 Q. By saying the weather was good, do you remember what  
20 time of year it might have been? Roughly? If you do.  
21 If you don't, you don't.

22 A. I would say it would be May or June.

23 Q. You said Paul Hicks came -- your son came to live  
24 with you?

25 A. Yes, he did.

1 Q. Would you describe that address, 56 Ithaca Road.

2 A. A one-family home.

3 Q. Who owns the home?

4 A. Me and my husband.

5 Q. Bringing you to around that time of May or June of  
6 2004, who lived at the home?

7 A. At that time it was me, my husband, my sister, Paul  
8 when he got out of jail and my other son Sir Dwayne.

9 Q. When Paul got out of jail and came back to live at  
10 home with you in 2004, what did he do with himself?

11 A. He applied himself to go to school because that was  
12 one of the conditions for him to live with me.

13 Q. What school did he apply to?

14 A. Bay State Technology. It's like for fixing  
15 appliances and air conditioning.

16 Q. Where was that school located? Or where is that  
17 school located?

18 A. That school is located in Canton.

19 Q. How far from your home?

20 A. Probably about 15, 20 minutes from my home.

21 Q. Where did Paul stay in your house? Did he have his  
22 own bedroom?

23 A. Yes, he did.

24 Q. Have you actually been to the school?

25 A. Yes, I have.

1 Q. What were the circumstances of you going to the  
2 school?

3 A. Transporting him to school.

4 Q. Transporting him. When Paul got out of jail in that  
5 summer of 2004, did he have transportation?

6 A. No.

7 Q. How would he get to and from certain places?

8 A. He borrowed one of our cars. His father let him  
9 have use of a vehicle.

10 Q. How many cars did you and Mr. Hicks own?

11 A. One each. And I own my police cruiser. That's what  
12 I take to work.

13 Q. What kind of cars did you own?

14 A. A Camry and a Kia.

15 Q. Do you remember when Paul started school?

16 A. He started school probably -- I want to say maybe  
17 October or November. Probably November.

18 Q. In October and November, confining you to weekdays,  
19 what would be his daily schedule, if you know?

20 A. Monday through Friday. For school? Monday through  
21 Friday.

22 Q. What time would he get up?

23 A. About -- between 6 and 6:30.

24 Q. Would you see him?

25 A. Yes, I was there.

1 Q. How would he get to school?

2 A. He would take one of our vehicles.

3 Q. Do you know when he would come home?

4 A. He would come home around 3:30, quarter of 4. I  
5 always got home after him. Most of the time he was  
6 there when I came home.

7 Q. For the most part did he go to school when he was  
8 living at home with you?

9 A. Yes, he did.

10 Q. Do you know a Miss Renee Heywood or Renee Yarrell?

11 A. Yes, I do.

12 Q. Is Yarrell her former married name?

13 A. Yes.

14 Q. And Heywood is her maiden name?

15 A. Her maiden name.

16 Q. How do you know Miss Renee Heywood?

17 A. I met Renee through my daughter, and then I got to  
18 know her more because of my son.

19 Q. What do you mean when you say because of your son?

20 A. Him and her had a relationship.

21 Q. What kind of relationship, if you could describe it?

22 A. Now boyfriend and girlfriend relationship.

23 Q. Speaking in terms of summer, fall, early winter of  
24 2004 when he had enrolled in school.

25 A. They had a somewhat relationship. He didn't know

1 her all that long to call it a real serious  
2 relationship. But they did have a relationship. I  
3 didn't see them that much to --

4 Q. Do you have firsthand knowledge, though, that he  
5 would go over to her home?

6 A. Yes, he would.

7 Q. Where was her home?

8 A. Her home was in Brockton on Cabot Street.

9 Q. Prior to Paul being arrested, had you ever been to  
10 that home?

11 A. Prior to him being arrested when?

12 Q. Excuse me. In January of 2005 you know Paul was  
13 arrested, correct?

14 A. Yes.

15 Q. Prior to that day, had you been over to the Cabot  
16 Street home?

17 A. Yes, I had.

18 Q. How many times had you been there, if you remember?

19 A. A few times. I was there a few times.

20 Q. Describe the home as you remember it.

21 A. A single-family home. When you walk in the front --  
22 you go in the side door, you'd go into the kitchen, like  
23 a deck.

24 Q. Back in 2004 did your son Paul Hicks live at Cabot  
25 Street?

1 A. No, he lived with me.

2 Q. You know you're under oath, correct?

3 A. Yes, I am.

4 Q. You do have firsthand knowledge he would go there,  
5 correct?

6 A. Correct.

7 Q. How often would he go there, if you know?

8 A. He was a grown man. He never said to me this is  
9 where I'm going whenever he left home, but I know he did  
10 go over there from time to time.

11 Q. And that would be -- I'm sorry, finish.

12 A. Even if he had told me he was going there, I don't  
13 know if he went there. But I would say he went there  
14 because they had a little relationship going and they  
15 were being in contact. So he would go over there.

16 Q. So if I can be clear, he certainly would go over  
17 there?

18 A. Yes.

19 Q. And he would go over there often?

20 A. Yes.

21 Q. Would he spend the night there to your knowledge?

22 A. To my knowledge I know he didn't spend the night  
23 there during the week.

24 Q. On the weekends it's fair to say?

25 A. Maybe on the weekends it's fair to say because

1 sometimes he wouldn't come home on a weekend. He don't  
2 tell me if he spends the night with somebody. That  
3 ain't the kind of thing he tells his mother. You know,  
4 I'm not that familiar with that kind of situation.

5 Q. How old is Paul?

6 A. Paul is 34? I don't know. I have seven kids and I  
7 have 17 grandkids, so I kind of get messed up on the age  
8 thing. I think he's 33.

9 Q. Sure. Now, taking you back to winter of 2004, did  
10 Paul, to your knowledge, have a bank account?

11 A. No.

12 Q. Did you ever have circumstances to go into his  
13 bedroom?

14 A. Positively.

15 Q. Did you ever find money in his bedroom, large  
16 amounts of money?

17 A. No, sir.

18 Q. Did you ever find bullets or ammunition?

19 A. No. No. Not in my -- no.

20 Q. Did you ever see a holster?

21 A. No.

22 Q. Did you ever see --

23 MR. MITCHELL: These are all leading  
24 questions, your Honor.

25 THE COURT: Overruled. Go ahead.



1 Q. Did you ever -- well, you're a state trooper,  
2 correct?

3 A. Yes, I am.

4 Q. You know what illegal contraband is, correct?

5 A. Yes, I do.

6 Q. Did you ever see any of that in your home?

7 A. No, I haven't.

8 Q. How would Paul get spending money?

9 A. From me and his father.

10 Q. How much money would you give him?

11 A. Basically it depended on what he needed. And I  
12 would say an average maybe \$125, \$150 a week. You know,  
13 he'd ask his father for some money. The agreement was  
14 you go to school, you do the right thing, we will help  
15 you 110 percent. And he was doing that so we had no  
16 problem giving him any money for anything he needed.

17 Q. Didn't own a car?

18 A. Didn't own a car.

19 Q. Any other items that you saw, extravagant items that  
20 he owned that he brought around the house?

21 A. No.

22 Q. During the week how often would you see him at the  
23 house?

24 A. Every day.

25 Q. Did you know him to keep clothing at Cabot Street?

1 A. No.

2 Q. When -- on the couple of occasions that you did go  
3 to Cabot Street, who would you see there, if you  
4 remember? This is prior to him being arrested.

5 A. I've seen Renee's children, which was Shenai,  
6 Darius, Daquon, Denari. I've seen her brother Aaron  
7 there because he lived there and his girlfriend, and  
8 they have two little girls. I don't know their names,  
9 but I've seen them there. And she has a brother Wayne.  
10 I've seen him there. I've met all of them. They do  
11 know me.

12 Q. And you've -- you've seen them there from time to  
13 time at that house?

14 A. Yes, I have.

15 Q. Is this before he was arrested on January 20th, 2005  
16 or after he was arrested?

17 A. Before. And I've seen them after, too.

18 Q. Would you describe how old Aaron Heywood is.

19 A. Aaron Heywood, to describe him I would think he was  
20 either in his late 20s, maybe about 27, 28, something  
21 like that.

22 Q. What about Wayne Heywood?

23 A. He appeared to look older, and I don't know if it's  
24 because of his lifestyle. He's, you know, like homeless  
25 and he has a lot of facial hair and dreads all over the

1 place. It's kind of hard but he looked like he was  
2 probably in his 30s, too. It's really kind of hard to  
3 describe, to give an age thing, because it looked like  
4 he's been through a lot.

5 MR. KROWSKI: If I might have just one brief  
6 moment, your Honor.

7 (Pause.)

8 BY KROWSKI:

9 Q. Did you ever see your son driving a Mazda MPV van?

10 A. No.

11 Q. Again, would you describe what kind of cars that you  
12 did own that he would take?

13 A. A Kia and a Camry.

14 Q. Is that a Kia, K-I-A?

15 A. Yes.

16 Q. How would you get to work if he took one of the  
17 cars?

18 A. I'd drive my State Police cruiser.

19 Q. Prior to him being arrested on January 20th, 2005,  
20 would he call you from Renee Heywood's house?

21 A. Yes, he has.

22 Q. Do you remember Renee Heywood's number?

23 A. No.

24 Q. Do you remember what it would show up as on your  
25 caller ID?

1 A. Only time I recall -- I never really look at my  
2 caller ID when I'm on the phone. So I really can't  
3 say. I talk on the phone. I'm not so with phones.

4 Q. You had those conditions with Paul, correct?

5 A. Yes, I did.

6 Q. And those conditions were that he go to school?

7 A. Yes, it was.

8 Q. And go to school every day?

9 A. Every day.

10 Q. And in your presence, your personal knowledge, did  
11 he get up and go to school every day?

12 A. He went to school every day. He did all the things  
13 he was supposed to do, changing his life. And that's  
14 why he could stay at our house, and that's why me and  
15 his father would stand behind him.

16 MR. KROWSKI: I don't have any further  
17 questions, your Honor.

18 CROSS-EXAMINATION

19 BY MR. MITCHELL:

20 Q. Good morning, Mrs. Hicks.

21 A. Good morning.

22 Q. Mrs. Hicks, my name is John Mitchell, and I  
23 represent the United States in this case. I just have a  
24 few quick questions up front.

25 It's fair to say that you're here to support your

1 son today?

2 A. Yes, I'm here to support what's right.

3 Q. Well, you certainly care about your son an awful  
4 lot. Isn't that fair?

5 A. Yes, that's fair. I care about all my sons.

6 Q. And you -- I'm sorry, I cut you off. You love all  
7 your children, correct?

8 A. Yes, I do.

9 Q. And all your grandchildren?

10 A. Yes, I do.

11 Q. And you were deeply concerned about your son Paul  
12 when he was released from incarceration in 2004,  
13 correct?

14 A. Yes, I was.

15 Q. So you took him into your home?

16 A. Yes.

17 Q. And you supported him with a significant amount of  
18 money, \$125, \$150 a week, correct?

19 A. Yes.

20 Q. And that was to put him -- that was your effort to  
21 put him back on his feet?

22 A. Yes.

23 Q. And that was a significant commitment on your part,  
24 right?

25 A. Yes.

1 Q. You have seven children, 17 grandchildren, all your  
2 own bills, but you saw fit to support him in a  
3 significant way; isn't that right?

4 A. Well, I wouldn't say it was to suffer because I  
5 could afford to help him out. All my seven children are  
6 grown. My youngest child is 32. My 17 grandchildren,  
7 they have mothers and fathers, and I do help them as  
8 much as I can any time I can.

9 Q. Right. But you don't have that kind of money to  
10 give out to each and every single one of them, each of  
11 your seven children and each of your 17 grandchildren,  
12 fair to say?

13 A. Not to each and every -- if I worked a lot of  
14 details and I made my husband work a lot of overtime,  
15 maybe we could.

16 Q. And you do that because you're committed to your  
17 kids, to your family; isn't that right?

18 A. Yes, I am committed to my children.

19 Q. You're not doing that to enrich yourself?

20 A. No, no, not to enrich myself. I enrich myself when  
21 I see them in good health and well being and they're  
22 doing the right thing.

23 Q. And you realize that a conviction in this case could  
24 have significant consequences; isn't that right?

25 A. Oh, I realize that when my -- any conviction has

1 severe consequence to anybody.

2 Q. And you don't want any harm to come to Paul, correct?

3 A. Correct. I don't want harm to come to him or  
4 anybody.

5 Q. In fact, you showed your concern for him in this  
6 case immediately upon his arrest; isn't that right?

7 A. Say that again? I'm not understanding that  
8 question.

9 Q. Do you recall the search conducted at 15 Cabot  
10 Street on January 20th, 2005?

11 A. I recall the arrest that was taking place, but I  
12 wasn't there for no search. I wasn't -- I went there --  
13 when I went there, I went there to remove the children  
14 that were there. I had no clue of what they have  
15 already done or what they were doing because they just  
16 made you go in and leave. You couldn't do nothing. You  
17 couldn't say nothing. They said don't say nothing, just  
18 go in and get the children. That's what I did.

19 Q. You received a phone call, did you not, that -- that  
20 evening that Paul was in trouble; isn't that right?

21 A. No, I was on my way to Cabot Street with my other  
22 son that I just came from the hospital with because he  
23 was from Atlanta and we were going to see Paul. And I  
24 found out he was over Renee's house baby-sitting, so  
25 that's where I was en route to.

1           When I called there, a sergeant answered the phone  
2           and I thought I had the wrong number. He said this is  
3           Brockton Sergeant -- I can't even remember his name.  
4           And I said, oh, I must have the wrong number. He said  
5           oh, no, you don't. And I was almost like to her house  
6           at that time so when we pulled up, they were there. And  
7           I got out and that's when I knew that was going on.

8           Q. You've been aware of the issues in this case from  
9           the start; isn't that right?

10          A. What you mean aware of the issues?

11          Q. Well, you've discussed this case with your son,  
12          correct?

13                       MR. KROWSKI: Objection to that, your Honor.

14                       THE COURT: Overruled.

15          Q. Have you discussed this case with your son, ma'am?

16          A. Recently.

17          Q. Just recently? When did you first discuss it with  
18          him?

19          A. I'd say a few months ago.

20          Q. You never spoke to him before that?

21          A. I spoke to him before that.

22          Q. So a few -- about the case?

23          A. Not about the case. About his situation, that he  
24          didn't know why this was being done to him, what was  
25          happening. And I was just telling him --



1 Q. I'm not asking you what you said --

2 MR. MITCHELL: Move to strike the hearsay,  
3 your Honor.

4 THE COURT: I'll strike the -- well, yeah,  
5 I'll strike it. I'll strike it. It was beyond the  
6 scope of the question and it would be hearsay.

7 BY MR. MITCHELL:

8 Q. Ma'am, just please listen to my question. I'm  
9 asking you when was the first time you discussed this  
10 case with your son?

11 A. I said a few months ago when I knew it was coming  
12 around for him to go to court.

13 Q. So he's been under arrest -- he was arrested in  
14 January of 2005, which was, what, over a year and a half  
15 ago, correct?

16 A. Yes.

17 Q. And you just -- you, a state trooper, mother of this  
18 man, discussed this case for the first time with him  
19 just a few months ago?

20 A. Yes.

21 Q. Do you remember telling the grand jury something  
22 different from that?

23 A. No. What I can recall -- can you recall what I told  
24 them?

25 MR. MITCHELL: May I have a moment, your

1 Honor.

2 (Pause.)

3 BY MR. MITCHELL:

4 Q. I'm going to show you your grand jury testimony,  
5 page 11. Could you read this to yourself and tell me  
6 whether your memory was refreshed as to whether you'd  
7 spoken to your son.

8 A. As I read this --

9 Q. Just let me ask you does it refresh your  
10 recollection whether you spoke to your son before your  
11 grand jury testimony in July of 2005?

12 A. Yes, the recollection that I did speak to my son,  
13 but it ain't recollection that I discussed his case with  
14 him. I asked him what was his charges were.

15 Q. Again, ma'am -- so you asked him what his charges  
16 were?

17 A. Yes.

18 Q. So you spoke to him about the case?

19 A. Yeah, but we didn't discuss the case. I asked  
20 him -- I didn't know nothing about the case and he  
21 didn't either. He knew what he was charged with and  
22 that's what I was trying to find out from him, what he  
23 was charged with. We did not discuss the case like what  
24 this is all about.

25 Q. Okay. Did you discuss the evidence in the case?

1 A. I asked him what was his charges, yes.

2 Q. Did you ask him whether it was his ammunition or  
3 drugs in the case?

4 A. He -- I didn't have to ask him. He was already  
5 saying it wasn't his. I didn't even have to ask him.

6 Q. So you discussed it with him, didn't you?

7 A. What are you calling "discussed"?

8 Q. You discussed this matter. You discussed whether he  
9 was --

10 A. I discussed his charges with his arrest. If you  
11 call that, yes, then I did. If that's what you're  
12 calling we discussed, then that's what I did.

13 Q. So you consider discussing the charges in the case  
14 discussing this case, correct?

15 A. No, you are. I did not decide that discussing his  
16 charges and him stating his charges what he was arrested  
17 for to me was discussing the case of what happened in  
18 that house that day.

19 Q. And you talked to him -- you talked to him before  
20 you appeared in the grand jury that day about whether  
21 the ammunition and drugs were his, correct?

22 A. He told me it wasn't his. I didn't have to ask him  
23 was that his.

24 Q. That's not my question.

25 A. That is your question. You asked me did I say to

1 him was that his ammunition or his drugs that was in the  
2 house. I asked him, "What are your charges?" And he  
3 told me and then he said, "Ma, they're not even my  
4 things, I don't even know why they're doing this."

5 MR. MITCHELL: Your Honor, may I have the  
6 question read back, the last question.

7 THE COURT: I'm not sure which question you  
8 want because it goes back a ways.

9 MR. MITCHELL: No, two questions ago.

10 THE COURT: Well, go ahead if you can find it,  
11 Shelly.

12 (Question read back.)

13 A. I didn't talk to him the day before I went to the  
14 grand jury. Say that again?

15 MR. MITCHELL: Could you repeat the question  
16 again, have it read back again?

17 A. Let me hear it again because things get twisted in  
18 here sometimes.

19 Q. I'll ask it again. Before you appeared in the grand  
20 jury, did you discuss with your son whether the  
21 ammunition and drugs were his?

22 A. You could say yes if you want to put it he discussed  
23 with me.

24 Q. I'm asking you, ma'am.

25 A. But I'm telling you how it went. You keep telling

1 me -- coming back with did I discuss. We had a  
2 conversation, but to discuss something to a certain  
3 length to me is a discussion. To ask somebody how are  
4 you today and they tell me they're fine, that's not a  
5 discussion as far as we discussed something.

6 Q. The first time the subject matter in this case came  
7 up wasn't a few months ago, correct, ma'am? It was  
8 actually far longer ago, wasn't it?

9 A. Well, for this case and to discuss this case was a  
10 few months ago when I talked to his lawyer, and Paul  
11 talked more about his case, that he's getting ready to  
12 go to trial. That's when we started discussing his  
13 case. That's when we had discussion. I tell him, well,  
14 your lawyer's working with things, the evidence, your  
15 evidence. You know, it all just come into play. I had  
16 no real big discussion over the legal situation here  
17 because that's why he has a lawyer. I don't discuss.  
18 But if you want to say that was being discussed so we  
19 won't keep running around in circles here, I discussed  
20 with Paul.

21 Q. Ma'am, you're a state trooper?

22 A. Yes, I am.

23 Q. Your son is under federal indictment?

24 A. Yes, he is.

25 Q. And it's your testimony that just a few months ago

1 you discussed this case for the first time with him?

2 A. Yes, discussed it. I mean, when you don't know  
3 what's going on, how do you really discuss except for  
4 your emotion of what's happening to you?

5 Q. Okay. You have -- you've discussed this matter with  
6 Mr. Krowski, too; isn't that right?

7 A. Yes, I have.

8 Q. How many times have you talked to Mr. Krowski about  
9 this case?

10 A. I would say three --

11 MR. KROWSKI: Objection. Can we have a  
12 sidebar?

13 THE COURT: No. Overruled.

14 BY MR. MITCHELL:

15 Q. Three times?

16 A. No, three or four times I discussed it.

17 Q. When was the first time?

18 A. That was a few months ago.

19 Q. All right. Do you know who's paying your son's  
20 legal bills?

21 MR. KROWSKI: Well, objection to that, your  
22 Honor.

23 THE COURT: Sustained.

24 Q. Well, I'll ask you this: Are you paying your son's  
25 legal bills?

1 A. Yes, I am.

2 Q. So you care to see a positive outcome from this case  
3 from a financial standpoint, too; isn't that right?

4 A. Not from a financial standpoint. I want what's  
5 right and what's wrong for what's going on here.

6 Q. You're willing to foot the bill for his defense  
7 because you love him; isn't that right?

8 A. No, because I have to know he's innocent or not  
9 guilty. I don't make him guilty before I flip a bill.  
10 I don't say my son is guilty. I am a state trooper, and  
11 I don't know all the facts and circumstances. No, I  
12 wouldn't. I thought he was innocent until proven  
13 guilty.

14 Q. You're aware, are you not, that your son was  
15 convicted of possession with intent to distribute  
16 cocaine in Plymouth Superior Court in 1996; is that  
17 correct?

18 A. Yes, I am aware he was incarcerated.

19 Q. Okay. Same Paul Hicks, right? No confusion?

20 A. No confusion, same Paul Hicks.

21 Q. And he's the same Paul Hicks that was convicted  
22 in -- also in Plymouth District Court in 1996 of  
23 possession with intent to distribute cocaine? Same Paul  
24 Hicks, correct?

25 A. Same Paul Hicks.

1 Q. And he's the same Paul Hicks who was convicted of  
2 manufacturing, distributing, dispensing cocaine in 1991  
3 in Dorchester District Court, correct?

4 A. Same Paul Hicks.

5 MR. MITCHELL: Your Honor, may I approach?  
6 There's a question I'd like to vet with the Court.

7 THE COURT: All right.

8 (Conference at sidebar commenced.)

9 MR. MITCHELL: I'd like to ask her a series of  
10 cross-examination questions that go to her bias, her  
11 bias specifically against the U.S. Attorney's Office and  
12 the ATF. The basis of that, those questions, would be  
13 right now she has two other sons who are pending  
14 indictment in this courthouse on separate cases. And I  
15 want to ask her whether --

16 THE COURT: What do you mean pending  
17 indictment?

18 MR. MITCHELL: She has two other sons, Dwayne  
19 Hicks and Dana Hicks, who are under indictment in this  
20 court.

21 THE COURT: Under indictment?

22 MR. MITCHELL: Yeah, under indictment right  
23 now. I want to ask her whether she -- as she testifies  
24 here today does she -- essentially whether she has --  
25 whether she has an ax to grind against our office



1 because she has three sons indicted by this office.

2 MR. KROWSKI: I don't know how that would  
3 survive the 403 analysis. What's the probative value?  
4 It's pretty clearly established that she's the mother,  
5 she loves her son, there's an inherent bias there. To  
6 now bring in criminal charged conduct of siblings --

7 THE COURT: I'd exclude it under 403.

8 (Conference at sidebar concluded.)

9 BY MR. MITCHELL:

10 Q. Mrs. Hicks, isn't it true that your son and Renee  
11 Yarrell actually had a very close relationship in  
12 January of 2005?

13 A. Yes, they had a close relationship. As close as  
14 girlfriend and boyfriend. I mean, I don't think they  
15 were getting ready to get married or anything but...

16 Q. Well, do you recall that -- you mentioned on direct  
17 that you had actually visited her house on a few  
18 occasions, correct?

19 A. Yes.

20 Q. And before your son started going out with her, you  
21 didn't know her, correct? That was your testimony,  
22 wasn't it?

23 A. No, I met her at my daughter's house. I met her  
24 with my daughter before I met her with my son.

25 Q. But you didn't get to know her until they were going

1 out; isn't that correct?

2 A. That's correct. I got to see more and hear more of  
3 her after that.

4 Q. And you were invited over -- she invited you over to  
5 her house; isn't that right?

6 A. Well, it was more of I had to pick up something from  
7 her because she helped me with a situation.

8 Q. You said you'd been over there a few times?

9 A. Yes.

10 Q. So you were familiar with the house, correct? You  
11 were asked about that, weren't you?

12 A. Yes, I am familiar with the house.

13 Q. And she had been to your house; isn't that right?

14 A. Yes, she had.

15 Q. In fact, she had taken the time to help you out with  
16 some matter at your house?

17 A. Yes.

18 Q. And, in fact, you were so close to her that your  
19 first instinct when you learned that there was an arrest  
20 at that house on January 20th was to take care of her  
21 children, wasn't it?

22 A. Wasn't my first instinct. My instinct when I asked  
23 was the children in there, they were concerned for  
24 someone to take the children and I told them I would  
25 take the children.

1 Q. You appointed yourself to be the temporary custodian  
2 of those children. Isn't that fair to say?

3 A. Yeah, that's fair to say. But someone had already  
4 came, a friend of hers came and took the children. I  
5 didn't have to take 'em. I never took 'em.

6 Q. These are children you knew?

7 A. Yes, I know them.

8 Q. And you saw fit to step in because you felt yourself  
9 to be an appropriate person to care for those children?

10 A. Yes, and take them away from that situation of what  
11 was going on in there because I know that's not good for  
12 children. And I'd do that with anybody's children, not  
13 just particularly hers. I'm a mother.

14 Q. Well, you don't just randomly walk on to search  
15 sites and take care of the children who happen to be at  
16 a search site, do you?

17 A. Say that again?

18 Q. Once again, you don't -- this isn't something you do  
19 often. That is to say, you go to a site where a search  
20 warrant is being executed and care for the children who  
21 might be at that site, correct?

22 A. I didn't know beforehand the search warrant was  
23 being executed. I was going there and when I got there,  
24 that's what was going on. And to me the right thing to  
25 do was to get the children out of that kind of situation

1 and let them do whatever they were doing.

2 Q. You thought it was appropriate to care for those  
3 children because, in part, you knew Renee well enough to  
4 do that. Isn't that fair to say?

5 A. Not because I knew her well enough. It was just the  
6 right thing to do. It didn't cross my mind, oh, these  
7 are Renee's children, let me take them because I'm going  
8 to care what Renee's feeling, no. Renee wasn't even  
9 there. Renee was at work.

10 Q. You weren't a complete stranger to these children?

11 A. No, no.

12 Q. Now, you were asked some questions by Mr. Krowski on  
13 direct about who was living at that house, correct?

14 A. Who I seen at that house.

15 Q. Well, his question was -- you said -- you said  
16 specifically on direct, did you not, that certain people  
17 were living at that house?

18 A. Yes, and the people I said do live at that house.

19 Q. Okay. And you know that because of your visits  
20 there. Is that your testimony today?

21 A. No, because Renee said they lived there. And when I  
22 went there, they were there. So I assumed they do live  
23 there.

24 Q. Well, are you aware -- Aaron Heywood was one of the  
25 names mentioned, right?

1 A. Say that again?

2 Q. Aaron Heywood was one of the names you were asked  
3 about?

4 A. Yes.

5 Q. Were you aware in January 2005 Aaron Heywood was  
6 actually living at 6 West Street, Brockton?

7 A. No, I wasn't aware.

8 Q. Do you know that's what he told the Brockton Police  
9 Department?

10 MR. KROWSKI: Objection.

11 A. No, I don't know whether --

12 THE COURT: Overruled.

13 A. I don't know his lifestyle. I don't know all about  
14 him or what he does on them. I would have no idea.

15 Q. But you testified he lived in that house; isn't that  
16 right?

17 A. Yes, but I didn't say on that date. I didn't know  
18 if he lived there then. I have no idea. But I know he  
19 lived there to my knowledge. I didn't know if he was  
20 still living there. I don't know how long he was living  
21 there. I didn't know how long he lived there before I  
22 knew Renee. I don't know. But I know he has lived  
23 there. He lived there with his mother, too.

24 Q. So your testimony is on January 20th, 2005 you don't  
25 know whether he was living there?

1 A. January 2005?

2 Q. January 20th, 2005 when that arrest was made --

3 A. No, I don't know if he was living there on that day  
4 that arrest was made.

5 Q. Okay. You were asked --

6 MR. MITCHELL: May I have a moment, your  
7 Honor.

8 (Pause.)

9 Q. One of the other names that you mentioned was Wayne  
10 Heywood; isn't that right?

11 A. Yes.

12 Q. Are you aware that in that same time period that a  
13 restraining order was in effect against Wayne Heywood  
14 such that he was not allowed legally to go near that  
15 house?

16 A. No, I didn't know if it was at that period. I've  
17 known of them to have a restraining order on him, and  
18 he's broken it a number of times because they had to  
19 call the police to get him out of there. Because she  
20 would call, he's in here, writing things on the wall.  
21 He was like a little distraught, pasting stuff, stopping  
22 up the toilet. You know, I'd hear things like that just  
23 through the conversation.

24 But the period of time, I really couldn't put dates  
25 with them. You know, I don't know when the restraining

1 orders were going to end or when they began. And I know  
2 they'd call the police and they'd remove him. I just  
3 knew basically like that. I don't know at what times.

4 It was none of my business really. It wasn't like I  
5 was to know all that with them for any reasons. It's  
6 just people saying their situations, and I am a person  
7 people talk to a lot. You know, whenever something's  
8 going wrong, you know, I just listen to her. If she  
9 said her brother was by and he did this and my kids are  
10 afraid so I'm going to call the police or something.  
11 You know, in that respect.

12 Q. Okay. So to your knowledge, he was -- she would  
13 have him removed from that house when he was violating  
14 the restraining order which was in place at that time,  
15 fair to say?

16 A. If he got violent. If it was cordial, she'd let him  
17 stay, even though she wasn't going to see him. If he  
18 was taking medication or something, he could stay. You  
19 know, I don't know like the times he could stay and he  
20 couldn't because I didn't really know when the  
21 restraining orders were in effect and they wasn't, if  
22 they were overwith and she had one before. I really --  
23 but I know there was -- that was involved in some  
24 periods of time, that she had a restraining order on  
25 him. When he was there at that period, I do not know.

1 I don't know. I don't know nothing about the length of  
2 the restraining order or anything. I've heard it  
3 mentioned that she's had one, she's gotten one before.  
4 You know, just through a conversation. Because he was  
5 driving her and her kids in an uncomfortable situation.  
6 And she loved her brother, but he was just doing things  
7 there that they didn't feel safe, the kids didn't feel  
8 comfortable, and she said she had to do something. She  
9 thought they'd put him in a home or something. I mean,  
10 I don't know what was supposed to be the outcome because  
11 I never followed up on it.

12 Q. Okay. Fair to say that Mr. Heywood's severely  
13 mentally ill?

14 A. I wouldn't say severely. I don't know him that well  
15 to even say that. I ain't a doctor.

16 Q. You characterized him as having dreadlocks and --

17 A. Yeah, and he was homeless. Just because you're  
18 homeless doesn't mean you're severely ill. You might be  
19 having a hard time, that you look at things different.  
20 That doesn't mean he's severely ill. He could hold a  
21 conversation with you.

22 Q. He's a schizophrenic, right?

23 A. I have no idea. I have no knowledge of that, of his  
24 being a schizophrenic. You told me describe him and I  
25 described him when you wanted to know his age. It's



1 hard to detect his age when someone looks like they've  
2 been through a lot of worry and whatever. I couldn't  
3 say he was schizophrenic or seriously mentally ill or --  
4 it's not my place.

5 Q. Let me ask you about a couple of other names.

6 Edward Robinson. Do you know Edward Robinson?

7 A. Yes, I know a Edward Robinson.

8 Q. He's a friend of your son's?

9 A. Yes.

10 Q. He's a friend of some of your other sons, correct?

11 A. We all know him.

12 Q. Yeah.

13 A. Known him since childhood.

14 Q. And you know him to have lived in January of 2005  
15 down at Algonquin Terrace in Plymouth; isn't that right?

16 A. I don't know where he lived either, to say an  
17 address on him. I have no idea.

18 Q. He wasn't living at 15 Cabot Street; isn't that  
19 right?

20 A. Not to my knowledge. I couldn't say that's where he  
21 lived.

22 Q. And Darius Yarrell, you met Darius?

23 A. Yes, I have.

24 Q. You mentioned Darius in your direct, didn't you?

25 A. Say that again?

1 Q. You mentioned Darius in your direct?

2 A. In my direct?

3 Q. I'm sorry, direct examination. You mentioned  
4 Darius --

5 A. Yes.

6 Q. -- as one of those people who lived at 15 Cabot  
7 during sometime in the last couple years; isn't that  
8 right?

9 A. Yes.

10 Q. And Darius is a college student at Framingham State,  
11 isn't he?

12 A. Yes, he is.

13 Q. He's got his act together, fair to say?

14 A. I don't think Darius had an act to get together. He  
15 was always a good kid. What do you mean got his act  
16 together?

17 Q. That's exactly what I mean, he's a good kid.

18 A. Yes, he is.

19 Q. He's a college student?

20 A. Yes, he is.

21 Q. He's living on campus right now at Framingham State?

22 A. Yes. I don't know if he's living there, but he's in  
23 Framingham State.

24 Q. And others you mentioned living there are all small  
25 children, correct?

1 A. No. His sister Shenai is older than him. She's in  
2 college, too.

3 Q. She's a college student?

4 A. Yes, she is.

5 Q. Now, you remember Mr. Krowski asked you about based  
6 on your experience as a state trooper you recognize  
7 illegal contraband; isn't that right?

8 A. Yes.

9 Q. You've had training in narcotics investigations;  
10 isn't that right?

11 A. Yes.

12 Q. And you realize that in searches of homes where  
13 narcotics are found, what the police look for are  
14 indicia of residency; isn't that right?

15 A. Say that again? Indition (sic) of residency?

16 Q. Indicia of residency. Evidence that someone that --  
17 the people they think had the drugs were actually living  
18 there. Isn't that right?

19 A. Yes.

20 Q. Based on your training and experience as a state  
21 trooper, is it more or less likely that a person who has  
22 utility bills in his name at a location of a search  
23 actually lives in that location?

24 A. Well, that's not always the case.

25 Q. That's not my question.

1 A. Yes, with my experience as a state trooper, that's  
2 not always the case because we found things to be in  
3 people's names that people are not living there. They  
4 use fraud. People do a lot of things. As my experience  
5 as a state trooper, we wouldn't just based on that that  
6 we'd find something there. We'd have to find out with  
7 that person that applied, that did it, went through the  
8 whole procedure for it to be there that that's them.

9 Q. That wasn't my question, Mrs. Hicks. My question  
10 was this: Is it more or less likely that if someone has  
11 utility bills in his name is actually living at that  
12 location?

13 MR. KROWSKI: Objection to that, Judge.

14 THE COURT: Sustained.

15 Q. Based on your training and experience.

16 MR. KROWSKI: Objection.

17 THE COURT: Sustained. Same question.

18 BY MR. MITCHELL:

19 Q. Would you agree that a person -- that utility bills  
20 in the name of a person at a location, at a suspect  
21 location, indicates that the person lives there more  
22 likely than not?

23 MR. KROWSKI: Objection.

24 THE COURT: Sustained.

25 Q. Based on your -- based on your training and

1 experience, would the fact that someone had taken a  
2 shower at a place be an indicium that that person  
3 actually lived there?

4 A. No.

5 Q. It wouldn't?

6 A. No.

7 Q. Would a person who takes a shower at a location, at  
8 someone's house, at a house, more likely than not be  
9 someone who actually lives in that house?

10 A. No, it wouldn't be.

11 Q. It wouldn't?

12 A. No.

13 Q. What about if a person receives mail at a location,  
14 at a house? Would that -- would it be more likely than  
15 not that that person actually lives at that house?

16 MR. KROWSKI: Objection.

17 THE COURT: Sustained.

18 Q. Mrs. Hicks, how long you have been on the State  
19 Police?

20 A. Twenty-four years.

21 Q. Okay. And where were you employed before that?

22 A. I was at home.

23 Q. So you've been employed full time for 24 years?

24 A. Yes, sir.

25 Q. Was that entire time with the Massachusetts State

1 Police?

2 A. Yes -- no, earlier was with the Metropolitan  
3 Police. Then they consolidated.

4 Q. How long were you with the Metropolitan Police?

5 A. Since 1983. And then I -- they consolidated, I  
6 believe was it in 1990 or '91. Around that. I really  
7 don't remember the year, but it's been a substantial  
8 time back that we consolidated.

9 Q. Did you go to the State Police Academy?

10 A. Yes, for retraining. Yeah, we go there.

11 Q. Did you take a full-time basic training State Police  
12 Academy course?

13 A. I don't know if the MDC, the Metropolitan Police, is  
14 equivalent to theirs. I believe so. It's all a state  
15 organization. They all run the same.

16 Q. Well, do you understand that state police -- in the  
17 usual course state police troopers go through a  
18 full-time training period for several months before they  
19 actually are admitted on to the force?

20 A. Yes, they do.

21 Q. Did you go through that?

22 A. I went through a full-time as much was expected. I  
23 call it full time. I was there all the time with them.  
24 I went to the capacity at the time that I never stood  
25 away from it or was late or absent or anything. I'm not

1 understanding what you're trying to get at with this.

2 Q. Did you go through the usual state police basic  
3 training course that all state troopers go through?

4 A. I went whatever was required. If they called --  
5 when we consolidated, whatever training they bring us  
6 into qualified us to be state troopers, that's what I  
7 did. I did exactly what policy and procedure did.  
8 Whoever judges that, I have no idea. I know I have a  
9 badge, and I represent the state police. And I'm a  
10 state trooper. How much more of that am I supposed to  
11 be a state trooper whether I went to an academy? I  
12 didn't make myself a state trooper. They made me a  
13 state trooper.

14 Q. I guess I'm just asking you to answer my question.  
15 Did you go through the usual State Police Academy  
16 training?

17 A. No, I didn't have to because I was on the  
18 Metropolitan Police. I already had training.

19 Q. All right. So the answer's no?

20 A. I would have to say I don't know if they call the  
21 Metropolitan Police state training equivalent with State  
22 Police. I'm not -- I can't answer that question. I  
23 know they consolidated us and they thought so because  
24 they made us state troopers.

25 Q. When you're referring to consolidation, you're

1 referring to a law the legislature passed that abolished  
2 the Metropolitan Police and took all those police  
3 officers and stuck them in Massachusetts State Police,  
4 correct?

5 A. Yes.

6 Q. So you and everyone else who was in Metropolitan  
7 Police went over to the Massachusetts State Police?

8 A. Yes.

9 Q. You didn't have to go through all the training that  
10 State Police troopers go through?

11 A. No, we just had -- had to requalify at the State  
12 Police Academy.

13 Q. Okay. So you've been with the State Police since  
14 1990/'91, correct?

15 A. Yeah.

16 Q. And where have you been assigned during the last 15  
17 years?

18 A. South Boston, Troop H-6 barracks.

19 Q. When were you there?

20 A. I've been there since 1983.

21 Q. So you've been there, so, 13 years?

22 A. 1983? I would think -- yeah, I've been at South  
23 Boston since 1983. I never changed my barracks or my  
24 station. They changed that station into a State Police  
25 barracks. I've been there the whole time.



1 Q. Okay. Again, my question is since you joined the  
2 State Police, where have you been? Your answer is South  
3 Boston; is that correct?

4 A. Yes.

5 Q. What did you do there?

6 A. My present time I do drivers licensing.

7 Q. How long have you been doing that?

8 A. About ten years.

9 Q. When's the last time did you a narcotics  
10 investigation?

11 A. I never did a narcotics investigation. They have a  
12 special unit for that. I never did a narcotics  
13 investigation.

14 Q. When is the last time you participated in a search  
15 warrant of a house where narcotics was found?

16 A. I never did that either.

17 Q. When was the last time you arrested somebody for  
18 narcotics trafficking?

19 A. Never. I never worked on a narcotics unit. I never  
20 did that.

21 Q. So when you -- when you said on direct with such  
22 certainty that you knew what illegal narcotics looked  
23 like, illegal contraband, you really haven't worked  
24 those kinds of cases; isn't that right?

25 A. I haven't worked them cases but they train us and

1 they make us aware of illegal contraband and, you know,  
2 we do a lot of things. Rape cases, I never worked one  
3 of them either, but they show us what to look for if we  
4 come across it because I can come across anything.

5 Q. You mentioned on direct that you have seven  
6 children, correct?

7 A. Correct.

8 Q. And one deceased?

9 A. One deceased, yes.

10 Q. Seventeen grandchildren?

11 A. Yes.

12 Q. You work full time?

13 A. Yes, I do.

14 Q. Your husband works full time?

15 A. Yes, he does.

16 Q. Fair to say you have a lot going on in your life?

17 A. Yes, fair to say. I have a whole lot going on in my  
18 life.

19 Q. All right. And you stated on direct that you had an  
20 awful lot going on a couple of years back in 2003/2004.  
21 Isn't that fair to say?

22 A. I wouldn't say in 2003 to 2004 I had a lot going  
23 on. I had a lot of grief because I had lost my son and  
24 I hadn't got over that, so I really was kind of out of  
25 pinch, you know. I didn't have a whole lot going on and

1 I was trying to be -- I don't know if you ever lost a  
2 child to know what that does to your life, but it takes  
3 a lot of matter to don't matter because you don't know  
4 why, you know, God does what he does but you can't ask  
5 why. And at that period of time, no, I was forgetting a  
6 lot of things, didn't know a lot of things. I was being  
7 there, I still was functioning like everybody else, I  
8 ain't the only person in the world that ever lost  
9 anybody; but this one was mine and I lost him and he was  
10 a twin. And I look at his other twin and we -- yeah,  
11 he's going through the same thing right now. He's going  
12 through the diabetes thing now, too. I might lose him.  
13 I might go through a lot. I'm going through that. I'm  
14 going through my husband just has cancer. We just got  
15 that diagnosis.

16 So I go through a lot of things but I still go. I  
17 don't know how I go. I think it's with the grace of  
18 God. But I go where -- I'm not going to not go if it  
19 ain't the right thing to do. I don't waste my time  
20 because I don't have the time to waste.

21 Q. I'm sorry that you have to testify about all this.  
22 I know it's not easy. And if you want a moment, we can  
23 take a moment.

24 What I'm asking you, where I'm going with this,  
25 Mrs. Hicks, is that with all this stuff going on in your

1 life, you really weren't keeping track day to day of  
2 what Paul was doing in January of 2005 and late 2004.

3 Is that fair to say?

4 A. I didn't have to keep track of Paul. He's a grown  
5 man. He kept track of me more or less, I'd say, for the  
6 situation I was in. All my sons, they all reach out to  
7 me because they know what I was going through and what  
8 was being. As I see them every day, I'd get a hug from  
9 them every day, a kiss every day. That I do know. The  
10 dates of it, no, I don't. But them being there and me  
11 seeing the right thing is all I was caring about in my  
12 heart, not that on this day was he going to go see Renee  
13 or on this day was, you know, Renee's brother -- I mean,  
14 them all questions you have to ask me, I have no problem  
15 with it. But for me to rack my mind to say, oh, yeah, I  
16 can remember on this day, no, I can't.

17 I remember September 15th, 2003 when my son died up  
18 in Brockton Hospital. That's what I remember. And for  
19 all the other stuff, I can do nothing but tell the  
20 truth. You know, really just start saying there's that,  
21 you know, I can't organize it that well. I'm just going  
22 with the truth, and that's all I can do. And that's all  
23 I came here today to do was to put the truth. Not that  
24 I'm afraid of what would happen this way or what would  
25 happen that way. I only can do what I know and what's

1 right. And that's how I live.

2 Other than that, I don't know what to say. You  
3 know, I really don't know what to say. I mean, I don't  
4 get into a whole bunch of that because my mind goes.  
5 I'm hoping one day to see my son, that he'll come, I'll  
6 see him in a dream. I'm looking to see my son. And you  
7 want to know what's really deep in me?

8 So for me to have this great want to do this or do  
9 that because I'm afraid, the only thing I know in life  
10 today to be afraid of is losing one of your children to  
11 death and you'll never see them again until I die.  
12 That's my fear of anything on this earth.

13 Q. You won't get any argument from me, Mrs. Hicks, on  
14 that. I mean, it's fair to say you've been carrying a  
15 pretty big cross, correct?

16 A. Fair to say.

17 MR. MITCHELL: I don't have anything else,  
18 your Honor.

19 THE COURT: Redirect?

20 MR. KROWSKI: No questions, your Honor.

21 THE COURT: All right, Mrs. Hicks, thank you.  
22 You may step down.

23 We'll take a recess.

24 THE CLERK: All rise. Court will take a  
25 recess.

1 (Jury withdrew, 10:49 a.m.)

2 (Recess taken, 10:49 a.m.)

3 (Court resumed, 11:07 a.m.)

4 THE CLERK: All rise.

5 THE COURT: I'm told that --

6 MR. KROWSKI: Mr. Hicks is not going to  
7 testify.

8 THE COURT: Is that the end of the evidence?

9 MR. KROWSKI: The defendant would rest.

10 THE COURT: I just wanted to hear you briefly  
11 on instructions. I have your instructions. I will give  
12 a form of each of them. Other than that, we'll just  
13 extend the break and come back, inform the jury that  
14 we're in the next stage, which is instructions and  
15 arguments and so on.

16 MR. MITCHELL: A couple of things, your  
17 Honor --

18 THE COURT: If we're going to get substantive,  
19 I would just ask Mr. Krowski whether you want Mr. Hicks  
20 out for this.

21 MR. KROWSKI: I don't know. How substantive?

22 MR. MITCHELL: I would like to get on the  
23 record that he's been advised of his right to testify on  
24 his own behalf.

25 THE COURT: You mean from him?

1 MR. MITCHELL: From the defendant himself.

2 MR. KROWSKI: Or I could do it as an officer  
3 of the court.

4 THE COURT: He's thinking 225 is what he's  
5 thinking.

6 MR. MITCHELL: Yeah, I'd like that. And,  
7 secondly, as to the instructions, two things on the  
8 instructions. One is there's a forfeiture count in the  
9 indictment for the cash that was sitting in the bedroom  
10 closet. I didn't submit any instruction on that, but  
11 I'm sure the Court has standard forfeiture instructions.

12 THE COURT: Well, are you going to submit that  
13 count? It would happen after the conviction, I think.

14 MR. MITCHELL: I guess I would.

15 THE COURT: Is it going to be a question of a  
16 jury issue on that?

17 MR. MITCHELL: I don't think so.

18 MR. KROWSKI: No, your Honor.

19 MR. MITCHELL: I guess I hadn't focused on it  
20 that much.

21 THE COURT: We just had it in the last trial  
22 we did. We got the verdict first and then the decision  
23 was made whether or not we would go forward and submit  
24 the forfeiture question to the same jury. In that case  
25 the defendant after the verdict on the substantive

1 crimes decided that the forfeiture question could be  
2 decided by the Court. And so we discharged the jury.  
3 That's what we did in the last one.

4 MR. KROWSKI: I have no problem with that.  
5 We've never claimed ownership of it, and I don't think  
6 there would be much vigorous opposition, your Honor.

7 THE COURT: Okay.

8 MR. MITCHELL: One other thing I just want to  
9 just make a brief oral motion in limine regarding  
10 defense closing. Specifically I would ask that the  
11 Court exclude from defendant's closing argument that  
12 because the -- he pleaded guilty in his three other  
13 cases, he's not pleading guilty here, they should  
14 believe that he's going to trial because he's actually  
15 not guilty. I think that's improper argument based on  
16 those convictions.

17 MR. KROWSKI: I'm not going to make that  
18 specific argument. I certainly -- it's probably fair  
19 game I can comment what they can't consider based on  
20 those convictions. I mean, he's presumed innocent so  
21 I'm not going to make an argument that shifts the burden  
22 upon myself. It's fair game that, look, you can't  
23 consider because he has prior convictions that he's  
24 guilty in this case.

25 THE COURT: Right. Sure.



1 MR. KROWSKI: That's certainly fair.

2 THE COURT: You're not going to make the  
3 argument --

4 MR. KROWSKI: That he pled once, he didn't  
5 plead this time so that must mean he's -- no.

6 THE COURT: All right. Well, why don't we see  
7 if we can get him out and if you want, we'll put on the  
8 record he has been advised of his right to testify.

9 (Defendant entered courtroom, 11:11 a.m.)

10 MR. KROWSKI: We're ready, your Honor.

11 THE COURT: Okay. Mr. Hicks, your lawyer has  
12 told me that you have discussed with him whether or not  
13 you ought to testify on your own behalf, which of course  
14 you have the right to do. You have the right also not  
15 to testify on your own behalf. And he's told me that  
16 after consulting that it's your decision not to -- that  
17 you will not testify in the case. Is that correct?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Okay. And you've had a full  
20 discussion with him and considered all the options one  
21 way and the other and the implications of those  
22 options?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And it is your decision?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: All right, thanks. We'll take a  
2 recess now and we'll -- let me just to the lawyers, I'm  
3 going to send in a copy of the indictment without the  
4 forfeiture allegations. That's just Counts One, Two and  
5 Three. And we have a -- if you want to take a quick  
6 look at our -- there's one minor edit I have yet to the  
7 verdict form. If you want to make any suggestion on  
8 that, it's pretty straightforward.

9 I think you know that my practice is to  
10 instruct on the substantive elements of the offenses  
11 before argument so the jurors have heard that by the  
12 time you argue, and then I'll continue with the evidence  
13 evaluation and so on and instructions after that. So --

14 MR. MITCHELL: No objections from the  
15 government, your Honor.

16 MR. KROWSKI: Defendant is satisfied for the  
17 record.

18 THE COURT: Okay. I just have one question  
19 about the -- most of the proposed instructions were all  
20 pretty standard and including the standard instruction  
21 under 18 U.S. Code Section 2 by the government. I don't  
22 see any reference to that theory or specific section in  
23 the indictment. So I don't propose to give that  
24 particular.

25 MR. MITCHELL: Yeah, I went back and looked.

1 All I can say is it wasn't my case originally, your  
2 Honor.

3 THE COURT: All right.

4 MR. KROWSKI: I agree, your Honor.

5 THE COURT: We'll take about a 15-minute break  
6 and then we'll call the jurors in and I'll begin with  
7 the instructions and so on.

8 THE CLERK: All rise. Court will take a  
9 recess.

10 (Recessed, 11:15 a.m.)

11 THE CLERK: All rise for the jury.

12 (Jury entered courtroom 11:44 a.m.)

13 THE CLERK: Please be seated.

14 THE COURT: Jurors, the evidence is  
15 completed. Now we're going to proceed to the next stage  
16 of the case, include my instructions about the law and  
17 the lawyers' closing statements to you. And when that's  
18 done, we'll ask you to deliberate upon the evidence and  
19 return with a verdict.

20 This responsibility that I have to instruct  
21 you in the law is an important part of what I am here  
22 for. Part of it is to preside over the trial obviously  
23 and make those legal rulings that are necessary as we go  
24 through the presentation of the evidence. But now at  
25 this point in the case when you've heard all the

1 evidence, to give you some guidance of some principles  
2 of law that apply to the matters you're going to have to  
3 decide, that is, whether the government has proved the  
4 charges that are made in the indictment or not and also  
5 some instructions to you about how you ought to go about  
6 evaluating the evidence and coming to your conclusions.

7           So I'm going to divide my instructions really  
8 into two parts. First I'm going to talk about those  
9 principles or propositions that the government must  
10 prove by the evidence in order to establish that the  
11 defendant is guilty of any or all of the charges in the  
12 indictment. After I've given you those instructions  
13 about, in effect, what constitutes the crime, what facts  
14 must be proved in order to prove the crime, after I've  
15 done that, the lawyers will have their opportunity to  
16 argue in their closing statements about how you ought to  
17 evaluate the evidence and presumably come to a  
18 conclusion that they would propose. When they finish  
19 that, I'll have some more to say to you about your  
20 evaluation of the evidence and your deliberations. So I  
21 get the first and the last word.

22           Now, it's my responsibility to set forth these  
23 principles of law that apply fully and accurately,  
24 without regard to any personal or private views that I  
25 might have about the wisdom or prudence of any of these

1 principles or whether there could be different or  
2 additional principles that could be applied in the  
3 circumstances, but rather to tell you faithfully what  
4 the law is with respect to these matters. You have a  
5 similar duty to accept and apply these principles fairly  
6 and sensibly to your deliberations, again, without  
7 regard to any personal or private views you might have  
8 about whether there could be different or additional  
9 principles that could be brought to bear but accept that  
10 these are the principles that do apply and should guide  
11 your deliberations. So, in a sense, you can think of  
12 these instructions as a short course in all the law you  
13 will need to know in order to decide this case.

14 Your responsibility is twofold. First of all,  
15 you resolve the factual issues in the case, what is  
16 true, what is proven by the evidence about the facts of  
17 the case. What happened historically in fact. And once  
18 you've decided that, you consider those facts in the  
19 light of these principles to see whether the government  
20 has established what needs to be established in order to  
21 convict the defendant or not. So you have a  
22 fact-finding function and then applying the law, the  
23 legal principles to those facts after you resolve them.

24 So what I'm going to talk about now are the  
25 legal propositions. I'll come back to the fact finding

1 aspect a little bit later. These are the legal  
2 propositions and the government must prove, then, these  
3 matters as a matter by the evidence.

4 Now, as I told you at the beginning, and I  
5 think you perhaps have been reminded in the course of  
6 the case, the indictment presents three counts. The  
7 first count alleges possession, that the defendant  
8 having previously been convicted of a felony offense  
9 unlawfully possessed ammunition in violation of United  
10 States statute. Second -- so you can think of the first  
11 count as unlawful possession by a felon of ammunition.  
12 Second count charges the defendant unlawfully possessed  
13 more than five grams or five grams or more of cocaine  
14 base or crack cocaine with the intent to distribute it.  
15 The third count charges the defendant unlawfully  
16 possessed a quantity of cocaine, that is powder cocaine,  
17 not crack cocaine, with the intent to distribute.

18 Let me go through each of those in some --  
19 break down each of them into the separate propositions  
20 or sometimes we call them elements of the offense that  
21 the government is required to prove.

22 One element of each offense, one element that  
23 is common to each offense, is the notion of possession.  
24 In each case the defendant is charged with possessing  
25 something that is unlawful or in an unlawful way.

1           To "possess" something for these purposes  
2 means to have both the ability and the intention to  
3 exercise authority, dominion or control over that  
4 thing. That is, possession can be said to have occurred  
5 or to occur when a person has both a subjective  
6 intention to exercise control over an item and an  
7 objective ability to do so. So it's the coincidence of  
8 the intention to do so and the ability to do so at the  
9 same time.

10           Now, possession may have -- may occur when  
11 someone has actual direct physical control over an  
12 object. You're actually holding on to something. If I  
13 pick up one of my books and hold on to it, obviously I'm  
14 in possession of it. You don't have to be actually in  
15 direct physical possession of something in order to  
16 possess it for purposes of the law. I'm still in  
17 possession of that book even though I'm not touching it  
18 because I have right now the ability and intention to  
19 exercise control over it. As a matter of fact, I am in  
20 that sense in possession of those books that are in my  
21 office in another part of the building because I intend  
22 and have the ability to exercise control over them. So  
23 when we talk about something that is not actual, direct  
24 physical contact, we sometimes call it constructive  
25 possession to distinguish it from actual possession; but

1 either kind is possession. The hallmark is is there a  
2 coincidence, a simultaneous coincidence, of both the  
3 intention to exercise control over it and the ability to  
4 do so.

5 Possession is not the same as ownership. A  
6 person can possess something without owning it. For  
7 example, the books here and in my office belong to the  
8 court, not me, but I'm in possession of them. Just as  
9 if you go to the public library and take a book out, the  
10 book still belongs to the library but you're in  
11 possession. So ownership is not the question but  
12 possession.

13 Possession does not have to be exclusive. It  
14 can be shared by more than one person. An object can be  
15 simultaneously, in a sense, possessed, perhaps not  
16 directly unless you have both people hanging on to it  
17 but certainly constructively can be simultaneously  
18 possessed by more than one person. I'm sure you can  
19 think of examples in your daily lives of how you share  
20 possession of things with people. Sometimes you may  
21 think you share possession of the remote control for the  
22 TV, and sometimes you may want to have exclusive  
23 possession of it. But, in any event, either satisfies  
24 the question of possession.

25 So that's a common element that runs across



1 each of the three counts, and the government will have  
2 to prove by the evidence beyond a reasonable doubt that  
3 the defendant possessed the particular item in each  
4 charge in accordance with those meanings or that meaning  
5 of what possession is.

6 Now, the first count charges the unlawful  
7 possession of ammunition by a felon. There's a federal  
8 statute that makes it unlawful for a person who has  
9 previously been convicted of a felony, that is, an  
10 offense punishable by imprisonment for more than one  
11 year, a person who has been so convicted may not possess  
12 ammunition under this federal statute. So the offense  
13 is proved if a person possesses ammunition having  
14 previously been convicted of a felony.

15 The person -- the government must prove the  
16 person knowingly possessed the ammunition. "Knowingly"  
17 means that the act is done voluntarily and intentionally  
18 and not because of a mistake or accident. So you  
19 must -- you may find that an act was done knowingly if  
20 the person realized what was going on, realized what he  
21 was doing, what he was in possession of and didn't act  
22 through ignorance, mistake or accident. So knowingly is  
23 an element of the offense.

24 "Ammunition" for these purposes is defined by  
25 a federal statute and it includes any ammunition or

1 cartridge cases, primers, bullets or propellant powder  
2 designed for use in any firearm. That's the statute  
3 definition of ammunition.

4 The law applies to someone who has, as I told  
5 you previously, been convicted of a felony under either  
6 federal or state law. That includes punishment -- that  
7 provides for punishment for a term exceeding one year.

8 Now, I've referred to the element of  
9 "knowingly possessed." In order to decide what somebody  
10 knows, we can't obviously look into their head and read  
11 the screen and see what they're thinking or knowing.  
12 How do you tell what somebody knows? Well, you may be  
13 able to infer knowledge from all the attendant  
14 circumstances. The way the person acts or behaves,  
15 perhaps from other circumstances, including how others  
16 may behave in connection with the person that you're  
17 wondering about. You may consider the circumstances as  
18 you find them to have been shown in the evidence and  
19 decide whether that shows knowledge of any particular  
20 fact on the part of the defendant.

21 There's one final element of this offense and  
22 that is that the item possessed, the ammunition, must  
23 have been connected in some way with interstate  
24 commerce. You heard some evidence about that. You may  
25 have been wondering about that. This actually is to

1 satisfy what we call a jurisdictional requirement.  
2 Congress has the power to regulate interstate commerce,  
3 and it is pursuant to that power that Congress enacts  
4 various provisions, including criminal laws, but  
5 Congressional power is limited to those matters that  
6 travel in interstate commerce. So in order to give  
7 federal jurisdiction over a matter, it must be shown  
8 that the matter affects interstate commerce. This means  
9 basically that the government must prove that the item  
10 at issue here, the ammunition, moved from one state to  
11 another at some point in time. It's not necessary to  
12 show there's a substantial economic effect on interstate  
13 commerce, but simply that there was some connection with  
14 interstate commerce involving the ammunition. And  
15 moving from one state to another would satisfy that  
16 element.

17 So in order to prove this offense against the  
18 defendant, the government must prove beyond a reasonable  
19 doubt that he possessed, as I defined that for you,  
20 ammunition, as I defined that, that had a connection  
21 with interstate commerce; that when he did so, he had  
22 been previously convicted of a felony, that is, a crime  
23 punishable by imprisonment for one year or more -- for  
24 more than one year; and third, that he did so knowingly,  
25 knowing that what he was doing was possessing

1 ammunition. It's not necessary to show that the  
2 defendant knew that the ammunition moved in interstate  
3 commerce. If the government proves all of those things  
4 beyond a reasonable doubt, then it has proved the  
5 offense alleged in Count One.

6 Let me turn to Count Two. Again, possession  
7 is a key element. That's what's charged. Count Two  
8 charges possession of crack cocaine. So I won't repeat  
9 the instruction of possession. They apply just as I've  
10 told you to the other matter. What is possessed must be  
11 shown to be, as alleged in the indictment, crack  
12 cocaine. Consider the evidence you have on that  
13 question and see whether the government has proved that  
14 there was a quantity of cocaine base or crack cocaine  
15 that was possessed in the requisite way.

16 The government again must show that it was  
17 done knowingly, again, voluntarily and intentionally and  
18 not because of accident or mistake. And for this count  
19 in addition to possessing it, the government must show  
20 that the defendant had a specific intent to distribute  
21 it. That is, the purpose of his possessing it was to  
22 distribute it. There's a difference in the law between  
23 the crime of possessing a controlled substance and  
24 possessing it with the intent to distribute it, two  
25 different things. So an element of the offense charged

1 is the defendant possessed it with the intent to  
2 distribute it.

3 Again, as with knowledge, what a person  
4 intends cannot be directly perceived or proved but can  
5 perhaps be inferred. And that's your judgment to make  
6 from all the circumstances as you find them to be.  
7 Perhaps the circumstances are the way a person acts or  
8 behaves, the way other people act with respect to the  
9 person, and all the other circumstances from the  
10 evidence as you find them to be can lead you to infer  
11 what a person intends. One of the questions presented  
12 to you is whether the government can prove that the  
13 defendant acted with the intent to distribute cocaine  
14 base, if the government, of course, has proved that he  
15 possessed it in the first place.

16 Now, to "distribute" for these purposes, for  
17 purposes of intent to distribute, distribute means  
18 simply to transfer possession of the controlled  
19 substance from one person to another. It can include  
20 any kind of delivery or transfer from one person to  
21 another. It often can include an economic transaction,  
22 that is, a sale of the cocaine base for money but it  
23 need not. It could include a gift or any other  
24 transfer. The notion of distribution is passes from the  
25 possession of one person to the possession of another

1 person.

2 Now, if you find on this count that the  
3 government has proved that the defendant possessed  
4 cocaine base with the intent to distribute it knowingly,  
5 you're also asked to decide the quantity of the cocaine  
6 base possessed because the indictment alleges that it  
7 was a quantity of five grams or more. You have evidence  
8 that will bear on that question. So that's a separate  
9 question from whether the basic crime is proved.

10 Finally, the third count, very similar to the  
11 second count, alleges possession of cocaine, this time  
12 powder cocaine, with the intent to distribute.  
13 Essentially the elements are very similar to the  
14 previous possession of cocaine base with the intent to  
15 distribute, must show possession as I've talked about,  
16 must be knowingly done and knowingly possessed. That  
17 is, not by mistake or accident. Must be a specific  
18 intent to distribute it and in the way I've just defined  
19 distribution or what it means to distribute. If you  
20 find all of those three elements with respect to the  
21 third count, then the government has proved the case.  
22 If you do not find all three, the government did not  
23 prove the case and the defendant would be entitled to  
24 your verdict of not guilty on that.

25 So that's all I'm going to say for now about

1 the elements. That's what the government must prove  
2 with respect to each of these counts. You'll hear now  
3 from the lawyers who will urge you to consider the  
4 evidence in your deliberations on those questions, and  
5 then I'll have a little more to say before you begin  
6 your deliberations.

7 The format will be for final arguments that  
8 the government goes first, followed by the defendant.  
9 The government then has an opportunity for a brief  
10 rebuttal.

11 MR. MITCHELL: Thank you, your Honor.

12 Good afternoon, ladies and gentlemen.

13 Ladies and gentlemen, when you were summoned  
14 as jurors and ultimately arrived in this case, you  
15 weren't asked for any qualifications; you were asked to  
16 give minor identifying information about yourselves. We  
17 went through a process by which certain people were  
18 selected out because they may have had certain biases  
19 that disqualified them. You're sitting here asked to do  
20 one thing, that is to apply the same common sense you  
21 apply in your daily lives based on logic and your own  
22 experience in dealing with people.

23 In this case, ladies and gentlemen, you have  
24 heard several witnesses, one after another, ten  
25 witnesses from the government. They have each testified

1 about specific pieces of evidence that they either found  
2 or saw or they heard. When you start to pull all those  
3 pieces together, one clear picture emerges and that is  
4 Paul Hicks on January 20th, 2005 in Brockton was a felon  
5 in possession of ammunition, possessed crack cocaine  
6 with the intent to distribute it and possessed  
7 cocaine -- powder cocaine with the intent to distribute  
8 that.

9 Let's take a look at the evidence. Let's  
10 start with the obvious stuff. He's a felon. You've  
11 heard testimony that he's been convicted on three  
12 occasions of possessing cocaine with the intent to  
13 distribute it. The certified copies of conviction have  
14 been admitted into evidence. You'll see those. Those  
15 are Exhibits 17A, B and C. We know also that what was  
16 found in the basement was cocaine. There's the  
17 stipulation that I read into evidence, I think it was  
18 yesterday. The two items, the Exhibit 1, Government's  
19 Exhibit 1, these are the drugs that were found in the  
20 basement. You know also that the crack that was found  
21 among them, the crack cocaine that's right here, more  
22 than five grams. It's in the stipulation. Both parties  
23 stipulate 20.89 grams of crack cocaine.

24 We know also that the ammunition in this case,  
25 this ammunition and the ammunition that you saw in the



1 picture, which I'll show you in a second, traveled in  
2 interstate commerce. We know that because of the  
3 testimony of Special Agent Schafer who said that that  
4 ammunition is manufactured in Minnesota. So it had to  
5 have crossed state lines to get here in Massachusetts.  
6 We know all that. We should opine that, as you'd  
7 expect, that those rounds of ammunition traveled in  
8 interstate commerce. She also said there aren't any  
9 ammunition manufacturers in Massachusetts.

10 Okay. Let's talk about the drugs. What do we  
11 know first? We know, again, we know that that stuff is  
12 cocaine. We know also -- we know also that somebody in  
13 that house was selling it. We know there was somebody  
14 selling it. There was drug paraphernalia all around the  
15 house, paraphernalia recognized by all of those trained,  
16 experienced narcotics investigators as being associated  
17 with cocaine distribution. There were scales in the  
18 kitchen cabinet, there was a scale -- digital scales in  
19 the kitchen cabinet, same kind of digital scale down in  
20 the basement along with baking powder, along with  
21 plastic bags right near where the drugs were found on  
22 the weight bench. It was all over the place. It was in  
23 plain view. There's no question that somebody was doing  
24 it. And we also know just based on the amount of drugs,  
25 Trooper LeVangie told us this is worth \$13,000 in

1 Brockton. Thirteen thousand dollars. That isn't used  
2 for personal consumption. Somebody's dealing that  
3 stuff.

4 So there's no question that somebody in that  
5 house was selling cocaine. So the question is who? Who  
6 was doing it? What do we know about the house? Well,  
7 we know, first of all, that it was owned by Renee  
8 Yarrell. Mrs. Hicks acknowledged that when she  
9 testified on behalf of the defense. Trooper Telford did  
10 as well. We know that she lived there.

11 We know there are three bedrooms in that  
12 house. The testimony of the troopers was two -- and the  
13 officers was -- two of those -- two of the three  
14 bedrooms had children's stuff. They were the children's  
15 rooms. They saw two children when they walked into the  
16 house earlier, two children watching TV. Those rooms  
17 are theirs. So it leaves one adult bedroom, the  
18 master -- what they described as the master bedroom. In  
19 that room, men's clothing. We know Renee Yarrell's got  
20 to sleep in some bedroom. There's also men's clothing  
21 in that bedroom. There was somebody in addition to her  
22 living there. There was men's clothing. Remember  
23 Officer McDermott's testimony was there was men's  
24 clothing in bags on the floor. He and others testified  
25 that there was men's clothing in the closet. So

1 somebody else was living there. It's not as though  
2 someone just left a shirt behind. Somebody had  
3 established themselves, had settled into that bedroom  
4 other than Mary Hicks (sic).

5           So who was that person? Who was that man?  
6 This man right here whose sitting right here. How do we  
7 know that? We know that they were boyfriend and  
8 girlfriend. His own mother said so. We know that  
9 because Trooper Telford said so. We know that also  
10 because we've seen them together. Here they are. This  
11 is Exhibit 13. We know he was living there because  
12 there are utility bills in his name. The electric bill  
13 was in his name, cable was in his name, and the land  
14 line was in his name. All three. All of them. They're  
15 all in the defendant's name.

16           The defendant -- one reason why someone might  
17 put utility bills in his own name is because he's using  
18 utilities. I mean, it's as simple as that. He's using  
19 utilities, therefore, he puts them in his name. Someone  
20 signed him up and sent the bill to him at the address.  
21 Well, if he wasn't using them, he like any of us would  
22 probably have objected to that. He received them. They  
23 were in his presence. Now, one might argue, well, look,  
24 you know, she had bad credit and she, you know, had to  
25 have the bills in somebody else's name because she

1       couldn't get the lights turned on because she hadn't  
2       been paying her bills. Well, if that were the case, you  
3       wouldn't expect the defendant to be telling his friends  
4       that he lived there.

5               This is a personal letter to him. This is  
6       Exhibit 12. It's to him. It has nothing to do with  
7       credit. He's telling people, holding himself out to the  
8       world at that time that he lived at 15 Cabot Street in  
9       Brockton. This is from a friend of his. You tell your  
10      friend you're living in a place after all, you live  
11      there. Why would he lie to his friend? Why --  
12      receiving a personal letter from a friend. To receive a  
13      personal letter, he tells his friend he lived somewhere  
14      else. That wouldn't make any sense now, would it?

15             We also know the defendant was seen at the  
16      house. Just days before the search Officer Costello was  
17      doing surveillance on Cabot Street, saw the defendant  
18      get out of the same car they saw the night of the  
19      search, the Mazda MPV van, and he walked directly into  
20      the house. His mother said he's at the house. His  
21      mother went to the house occasionally. They were that  
22      close. She not only her son and Renee Yarrell, but  
23      herself and Renee Yarrell, she went to the house. She  
24      went and rescued the children from -- during the  
25      search. The family were that close. So we know he's at

1 the scene.

2 We also heard from his neighbor, the booking  
3 officer, Patrick O'Malley, who said, you know, I saw him  
4 go in there -- I think I have his testimony right, your  
5 memory controls, but I think he said he used to go in  
6 there frequently. Sometimes go down to the porch, walk  
7 in with a bag, he would see the defendant in the  
8 morning. So he's at the house. People see him there.

9 But most of all, ladies and gentlemen, we know  
10 he lives there. We know he lives there because the  
11 evidence tells us he made himself at home there. Here's  
12 a guy when they walk in, he's sitting on the bed, he  
13 just got out of the shower. He's familiar enough with  
14 the place that he showered there.

15 We also know, and this is a subtle piece of  
16 evidence focused on the cell phone, but one of the  
17 things that's significant about the cell phone is what  
18 he did with it. They find him -- they go into the house  
19 at 6:40 on the 20th of 2005 and they find him, he's wet,  
20 he just got out of the shower. A half hour earlier we  
21 know that he was on the phone. Look at his phone  
22 records. We went through them in testimony. That's  
23 Exhibit 4. He had made a phone call before he went into  
24 the shower. What did he do with the phone? He  
25 didn't -- if he didn't live there, you'd expect him just

1 to put it on the countertop, right? If you're in  
2 somebody else's house, you go do something you put your  
3 close personal items like the cell phone on the  
4 counter. He put it inside the drawer. Only people who  
5 live in a place actually put stuff inside a drawer like  
6 that. He lived there.

7 And we know, ladies and gentlemen, that the  
8 evidence tells us also when we apply our common sense to  
9 it, that he was selling drugs out of that house. We  
10 know that for a few reasons. Remember what Trooper  
11 LeVangie told us about the way narcotics dealers in  
12 Brockton, cocaine dealers, handle cash. They do two  
13 things. They keep it close, for one, because they don't  
14 want -- they don't want to be ripped off, right? But  
15 they also have cash ready because they need to buy drugs  
16 from their suppliers. Well, we see both here. We  
17 see -- we find -- we hear the testimony of Officer  
18 McDermott, who found a large wad of cash in a man's coat  
19 in the bedroom. The only man around was this man right  
20 here. Just a few feet away. Now, would you expect  
21 somebody just to leave \$2,000 in cash in a bedroom like  
22 that in a house where there's drugs around? Does that  
23 comport at all with what you've heard about the  
24 narcotics trade from Trooper LeVangie? It doesn't make  
25 any common sense at all. The only person who could have

1 possessed that cash is Paul Hicks.

2 And the other thing to consider is of course  
3 he would have cash on him. He's getting cash from  
4 somewhere. We know he didn't earn that cash. He didn't  
5 have a job. His mother and his father weren't giving  
6 him that much money. She said 125, 150 bucks a week.  
7 Someone who is getting that kind of money from their  
8 parents and presumably is spending on everything we  
9 spend money on, gas, food, everything else, wouldn't  
10 have a wad of \$2,000 in cash on him. He got it from  
11 somewhere else. He got it from selling cocaine. That's  
12 where it came from.

13 We also know based on Trooper Levangie's  
14 description of what cocaine dealers do and the way they  
15 protect themselves is that they use firearms and  
16 ammunition and holsters and magazines, all the things  
17 that you saw, with the exception of the firearm, in  
18 proximity to the defendant. In the same bedroom, the  
19 same bedroom. It was all right there. Another sign  
20 that he's in the business.

21 And then you heard, remember you heard Trooper  
22 LeVangie -- Trooper Levangie's description of the way  
23 narcotics dealers use cellular telephones. They use  
24 them unlike the rest of us. They use them to do all the  
25 business because of their mobility, because they're easy

1 to get, because they're easy to discard, they're easy to  
2 put in other people's names. This was his -- we know  
3 this was his cell phone. Now, we know it because it was  
4 found there. Trooper Long pressed a few buttons and  
5 pressed my info on this and turned out to be the same  
6 number on the records. We look at the records -- this  
7 is Exhibit 4 again. Paul Hicks' cell phone.

8 First call opens the account. You'll see the  
9 account opened on 1/18/2005. First call on 1/18/2005  
10 with that brand new cell phone account was at 4:32 p.m.  
11 Time of the search, the last call he made before the  
12 search was at 6:08 p.m. So two days and a little under  
13 two hours. And during that very brief period of time he  
14 made 161 phone calls. Think about that. He's on the  
15 phone constantly during that period. I don't know how  
16 anybody could make -- well, strike that.

17 Use your common sense. Does that sound like  
18 anybody -- does that sound like the kind of call volume  
19 you see on a full-time student's cell phone records?  
20 No. It's not. He's selling drugs. He's talking to  
21 suppliers, he's talking to customers. One hundred  
22 sixty-one telephone calls.

23 And you'll note also some testimony toward the  
24 end today that -- about the account being picked up.  
25 You lose a cell phone, someone else can go in and say --



1 someone can go in and say, well, I lost my cell phone.  
2 I'll leave it to your experience. There are calls later  
3 on you'll see, somebody's evidently using a phone that  
4 they picked up in this account. But what's significant,  
5 however, ladies and gentlemen, is after he makes that  
6 one -- that last phone call at 6:00 on the 20th, there's  
7 another call the next day -- Trooper LeVangie explained  
8 that investigators oftentimes will pick up a phone and  
9 make a seizure and search, make a call to see who the  
10 drug dealer's calling. After that, there are no calls  
11 for two weeks. The calls stopped. He's been arrested,  
12 the phone's been taken away from him, there are no  
13 calls. We go from two days worth of 161 calls, we get a  
14 call by an investigator next day, and then there's  
15 nothing. And then somebody evidently picks up the  
16 account from there. Take a look at Exhibit 4.

17 There are multiple connections -- multiple  
18 evidence suggesting a connection to him and the drugs in  
19 the basement as well. His own bills are in the  
20 basement. The Comcast bill says basement apartment.  
21 The weight bench itself, a clever place to put cocaine.  
22 Who do you think thought of that? Renee Yarrell? Was  
23 it her children? Who among them based on your  
24 experience is probably using a bench press. You'll see  
25 the picture. Who's probably lifting weights and

1 thinking down, boy, I could probably put drugs in those  
2 legs. This man right here.

3 Trooper Telford told us that he found a  
4 notebook in the van, the van that was parked in the  
5 driveway at the time of the search, had Bay State School  
6 of Technology printed on it, where he went to school.  
7 Within that notebook he also found notes about weight  
8 lifting. Again, this man was down using that weight  
9 bench.

10 And based on his conviction, three convictions  
11 of possession of cocaine with the intent to distribute,  
12 one after another, he knows very well what the scales he  
13 saw and the baking soda he saw and the bags he saw are  
14 used for. They're used in the drug trade. He knows  
15 what they're used for. Perfectly evident to him. It's  
16 not -- there's no mistake here. I mean, he knew that  
17 there were -- there was no mistaking that by someone who  
18 has had those experiences that there are drugs in the  
19 house. And those convictions also show that he  
20 wasn't -- he wasn't consuming those drugs. There was no  
21 consumption material found during the search. He  
22 intended -- he intended to distribute those drugs.

23 Now, there's no evidence that there was  
24 somebody sort of wandering through the house and was  
25 making drugs there and was distributing them outside the

1 house. That wouldn't make any sense at all. There have  
2 been some names bandied about in the course of the  
3 testimony. The only evidence that there may have been  
4 other people living there came from Mrs. Hicks on direct  
5 examination, that there was an individual named Aaron  
6 Heywood who lived there for a while, a Wayne Heywood.  
7 And then afterward on cross-examination she said I  
8 really didn't know when they were there or when they  
9 were coming and going, I just don't have a memory of  
10 it. So she couldn't say. She couldn't say who was  
11 living there January 20th, 2005.

12 And it wouldn't make any sense. It wouldn't  
13 make any sense at all. It wouldn't make any sense at  
14 all that somebody who didn't live there would keep the  
15 drugs there in that amount. Who would leave -- even in  
16 a good hiding place, who would leave \$13,000 worth of  
17 cocaine readily transferable into cash on the streets of  
18 Brockton behind in a house where he knows other people  
19 live and where there are signs of drug activity so that  
20 people recognize those signs, maybe start to look for  
21 drugs if they thought any were hidden. Wouldn't make  
22 any sense for anybody.

23 It wouldn't make any sense for people to leave  
24 cutting agents there. You saw the board. You saw the  
25 sill where the cutting agents were found. This is a

1 flat surface in the basement. This is where the cocaine  
2 was made, this is where the cocaine was cut. There's  
3 testimony from Trooper LeVangie that that cocaine was  
4 uncut. It hadn't been fully diluted with baking  
5 powder. There was still more product to be made. This  
6 is where they made the product. It wouldn't have been  
7 practical at all for somebody to go in and out of the  
8 house undetected and go out and sell the drugs. These  
9 items were being cut by someone who lived there.

10 And so who possibly could that have been?  
11 Could it have been Renee Yarrell? Could those have been  
12 her drugs? Well, maybe, yeah. She could have been  
13 selling them, too. And I turn you back now to the  
14 instruction about joint possession. More than one  
15 person can possess an item. More than one person. And  
16 so -- and we know that if they're her drugs, they're his  
17 drugs as well. We know that because you heard the  
18 tape. You heard him tell her exactly what she -- what  
19 he wanted her to do. He wanted her to sell cocaine for  
20 him. She wasn't -- listen to that tape. And you should  
21 listen to it. You'll have a tape player, which is  
22 somewhere here, a tape player to bring back to the jury  
23 room to listen to that recording. Listen to the  
24 recording. He -- she wasn't doing any of this on her  
25 own. She was doing it all at his behest. That was his

1 modus operandi, that was his practice, that was his  
2 method, to tell her to sell the drugs on his behalf. So  
3 if those drugs happen to be that day happened to be  
4 Renee Yarrell's, they also happen to be Paul Hicks'.

5 That's the cocaine. What about the  
6 ammunition? This is the picture. This is Exhibit 6. I  
7 mean, come on. This drawer, this is the front of the  
8 drawer as I explained to you, this is the ammunition,  
9 this is the cell phone he just used, here's his money,  
10 here's his watch, here's his key. Did he exercise  
11 control of that? Absolutely. Did he intend to? This  
12 is where he puts his personal stuff. This is something  
13 familiar to all of us. Each of us has a place in the  
14 house where we sort of -- we dump our stuff. We dump  
15 our stuff in the same place every time because we don't  
16 want to go around looking for it. You have to run out  
17 of the house, you don't want to forget things. This is  
18 where he put this stuff. This was his drawer. And in  
19 order to get at the cell phone, which we know was his,  
20 and the cash which nobody leaves cash around, you have  
21 to reach over the ammunition itself. Of course that's  
22 his ammunition. This is all his stuff.

23 All of it, the cell phone, the watch that he  
24 would have taken off just before he got in the shower,  
25 the key and his money. There's no question, ladies and

1 gentlemen that, he constructively possessed these items.

2 Now, you one might say, well, that box wasn't  
3 fingerprinted. The loose ammunition was fingerprinted,  
4 the phone was printed. No prints were lifted off of  
5 anything. Not just his prints, anybody's prints. And  
6 so you look at that box. It's just like -- that box is  
7 just like that box. The Arm & Hammer box. No prints  
8 were lifted off of that. No reason to expect that  
9 prints would be lifted off of this box or any of these  
10 other things. You heard what Trooper Silvia said. He  
11 said he only gets a 10 percent hit rate. This isn't  
12 CSI. As he said, you don't get prints in every  
13 incidence. He said 10 percent. There's a reason for  
14 that. Should the trooper, should the officers have  
15 handled the stuff a little more delicately? Maybe. But  
16 they go into a house in the heat of the moment, they  
17 have to handle things like ammunition carefully. They  
18 have to be handled. So ultimately, these were put in  
19 evidence. And they had to handle them.

20 You'll notice also there was some testimony  
21 about the other picture, Defense Exhibit No. 1. Two  
22 pictures, right? Two pictures of the same -- I'll hold  
23 this one up. This one obviously isn't blown up. The  
24 same stuff. There's testimony things were moved  
25 around. You'll notice -- I'll go like that. They had

1 to pull the holster back in order to take a shot of the  
2 cash, which you see right here, and the cell phone which  
3 you see right here. And moving it evidently to move the  
4 magazine. There's no evidence they planted two 9  
5 millimeter magazines in there. There was already one in  
6 there as it is anyway.

7 And what was most important was, in their  
8 testimony, was the location. They took this picture out  
9 in the kitchen. What's important is location of the  
10 ammunition. Each of the officers who saw this drawer  
11 were asked where did you see the ammunition when the  
12 drawer was opened up? Right here. It's right in the  
13 front. In order for him to reach anything else in that  
14 drawer, he'd have to reach over that ammunition. It's  
15 not like it was tucked in the back. It was right here  
16 in front, full view. It's not like one might conclude,  
17 well, it was tucked in back, he didn't know it was  
18 there. He knew it was there. There's no accident or  
19 mistake.

20 I'd ask you, ladies and gentlemen, to focus on  
21 this picture. And remember where he was when he was  
22 found with it. He had just gotten out of the shower, he  
23 was sitting down, he was right in front of the night  
24 stand and, you know, according to the testimony of the  
25 officers, within arm's length of it. He was facing it

1 and you fully expect under circumstances that he was  
2 about to go into it because that's where his cell phone  
3 was. The guy who had been on the phone -- who had  
4 received or made 161 calls the previous two days.  
5 That's the first place he went, back to where he kept  
6 the stuff. And they caught him red-handed. They caught  
7 him red-handed with this stuff. So this -- all of his  
8 ammunition, box of ammunition and the loose ammunition.

9 For all these reasons, ladies and gentlemen,  
10 the evidence leads to one conclusion: Paul Hicks was  
11 selling drugs out of 15 Cabot Street, that he possessed  
12 those drugs, and he was a convicted felon at the time  
13 who possessed part of -- as part of his job as drug  
14 dealer ammunition, which you see in the drawer. And I  
15 ask for all those reasons, ladies and gentlemen, that  
16 you return verdicts of guilty beyond a reasonable doubt  
17 on all three counts in the indictment. Thank you.

18 MR. KROWSKI: May I, your Honor?

19 THE COURT: All right, Mr. Krowski, fine.

20 MR. KROWSKI: Thank you.

21 Mr. Mitchell, your Honor.

22 The accusations, as I stated in my opening  
23 remarks, are brought by Mr. Mitchell on behalf of the  
24 United States government. Pretty powerful thing. This  
25 courthouse that we're in is owned by the United States



1 government. Pretty powerful thing. But the United  
2 States government doesn't hold any preeminence over a  
3 United States citizen. A United States citizen, which  
4 is what Mr. Hicks is, enjoys several constitutional  
5 protections. They're not mere words; they're not  
6 technicalities. They are fundamental, monumental  
7 rights. The first is is he was presumed innocent when  
8 the trial started. He had that constitutional  
9 presumption all throughout the evidence. As a matter of  
10 fact, as he sits there right now, his legal presumption  
11 is that he is innocent. It doesn't just automatically  
12 get taken away merely because the government makes an  
13 accusation, merely because the government puts on some  
14 witnesses, merely because the government tells you, oh,  
15 it's common sense, of course he lived there, of course  
16 they were his drugs. It requires sufficient evidence to  
17 prove beyond a reasonable doubt; and if they can't do  
18 that, he holds on to that fundamental, monumental  
19 right.

20 Now, you all went through the questionnaire  
21 process and you all indicated that you didn't know  
22 Mr. Hicks. You might know a little bit more about him  
23 today than you did Monday, but it's fair to say he's  
24 still a perfect stranger to you. You have to apply  
25 these constitutional principles to a perfect stranger

1 because, if you don't, you devalue and diminish the  
2 worth of those rights to each and every one of us.

3 The government is required to prove that  
4 Mr. Hicks knowingly and intentionally possessed  
5 ammunition while being a convicted felon and knowingly  
6 and intentionally possessed cocaine in its crack-base  
7 form and its power-base form and he did so with intent  
8 to distribute that. I would submit to you as a matter  
9 of law they have not done that in this case.

10 Now, there's two ways to prove possession.  
11 His Honor instructed you to that. Mr. Mitchell I  
12 believe in his opening remarks on Monday gave you his  
13 interpretation of that. Actual possession is dead on  
14 arrival. Certainly no indication, no evidence, no  
15 information, nothing you can point to that the  
16 government produced for you that Mr. Hicks was ever in  
17 actual possession of ammunition, that Mr. Hicks was ever  
18 in actual possession of powdered cocaine, or that  
19 Mr. Hicks was ever in actual possession of cocaine in  
20 its crack-based form.

21 Within evidence and for your consideration for  
22 a limited purpose, you have the fact that back in 1991,  
23 1995 and 1996 Mr. Hicks had prior convictions for the  
24 possession of cocaine with the intent to distribute and  
25 one of them was for distribution. You cannot take that

1 evidence and consider it for character evidence. What  
2 that means is he's presumed innocent in this case. You  
3 can't say did it before, did it again. You can't  
4 consider he's a bad person. You can't consider he's a  
5 person of bad character. You can't consider it for its  
6 propensity. You can't think that because he did it  
7 before, he did it again. That's not what it's offered  
8 for.

9           What it's offered for is the limited purpose  
10 of two things: One, that Mr. Hicks having seen the  
11 cocaine would have known what it's for. Of course.  
12 There's no real dispute based upon his prior convictions  
13 that he knows what cocaine looks like. Of course he  
14 does. That's not argued. But they've got to show more  
15 than knowledge that he knows what it looks like.  
16 They've got to show that he knew it was in that house,  
17 and then they've got to show that he had the intention  
18 to possess it.

19           Now, because actual possession is absolutely  
20 gone, they have to do it by constructive possession. So  
21 the first thing that they did -- and they know. Don't  
22 you think the experienced troopers in Brockton, police  
23 detectives, know that actual possession was gone and  
24 that even on constructive possession there wasn't a lot  
25 of evidence? Don't you think they tried too hard in

1 this case? Take it from the start. They want to put  
2 Mr. Hicks at 15 Cabot Street. Is there any realistic  
3 argument that he didn't go there? No. Didn't visit  
4 there? No. He's a 32-year-old man.

5 Now, the government wants to talk about common  
6 sense and each person has their own life, but it is not  
7 uncommon for a 32-year-old man, I'd submit to you, to go  
8 to his girlfriend's house; if she has children, to go  
9 there often to help out, to baby-sit the children. Yes,  
10 they even have a few articles of clothing. Hey, 32  
11 years old, even to spend the night on occasion, even to  
12 spend the night on the weekends. That doesn't make Paul  
13 Hicks a resident of 15 Cabot Street.

14 You heard from his mother, Rosemarie Hicks.  
15 And I'll concede this, you don't acquit or convict or do  
16 either on sympathies or likes or dislikes or biases.  
17 And you judge witnesses' credibility, that's a jury  
18 question. But do you really discredit her testimony?  
19 Don't you think the fair and accurate testimony was that  
20 Mr. Hicks was attending school? This so-called drug  
21 dealer didn't have money for his own car, had to borrow  
22 either Rosemarie's car or his father, Paul Hicks, Sr.'s  
23 car, would get up every morning at 6:30 because he had  
24 that quasi contract with his parents, would go to  
25 school, come home at 3:30 and, yes, would go over to 15

1 Cabot Street. But he didn't live there. He certainly  
2 went there.

3 How else did they try to establish that he  
4 lived there? They put on Officer O'Malley. Now keep in  
5 mind this theme of trying too hard. Officer O'Malley  
6 testifies that he has seen him just a couple of times.  
7 The guy lives 50 feet away and he's seen him a couple of  
8 times. Well, doing what? Well, once on the porch.  
9 What else? Walking in the morning. Where to? I don't  
10 know. With what car? No, just walking to the end of  
11 the street. When he was booked, didn't he give the  
12 address of 56 Ithaca Road? No. Wasn't there  
13 hesitation? No. Didn't Ernie Bell, the detective from  
14 Brockton, tell you to just go ahead and put Cabot Street  
15 anyway? No. Did it refresh his recollection when he  
16 looked at the report? It did but then he still said it  
17 didn't happen. They're trying too hard to make  
18 Mr. Hicks a resident of 15 Cabot Street.

19 You know from the evidence that he was in  
20 jail. We admit that. Again, you can't consider it for  
21 that he's a criminal, he's a bad person. But that house  
22 was in existence then. Renee Heywood lived there then  
23 with her children. It's her home. It's her family's  
24 home. Her brother Aaron Heywood we know from time to  
25 time would live there, even on occasion with his

1 girlfriend and his two children.

2 Trooper Telford gets up and testifies that  
3 during booking his initial reaction was 56 Ithaca Road,  
4 gave his mother's phone number. And Trooper Telford  
5 actually went ahead and told Officer O'Malley just go  
6 ahead and put 15 Cabot Street. Because they knew and  
7 they were trying too hard.

8 Now, how else are they trying to show that he  
9 lived at that address? Well, you'll have his school  
10 records. And his school records will suggest that he  
11 put 56 Ithaca Road. But they have utility bills. Was  
12 there one government witness that didn't acknowledge  
13 that in all of their vast experience, too many years to  
14 count, that that was a common thing, they always  
15 executed these types of search warrants and for a myriad  
16 of reasons utility bills came back in people's homes  
17 that didn't live there? There could be any number of  
18 reasons. The person who lives there could be trying to  
19 insulate themselves. Maybe they're not creditworthy.  
20 We simply don't know. But who had the power here?  
21 Whose case was it? Who has the burden of proof?

22 Now remember, as you're going through the  
23 facts, as you're deciding what the evidence is, keep in  
24 mind this isn't some sort of an equal race. Mr. Hicks  
25 is the one with all the protection. We don't have to

1 prove to you that he's not guilty. The government,  
2 they've got the burden. They've got the burden to prove  
3 this beyond a reasonable doubt. The investigation was  
4 in the complete power and control of the officers. The  
5 utility companies. Did you follow through? Did you  
6 find a contract that Mr. Hicks had actually signed to  
7 sign up for any of those utilities? No, we didn't do  
8 that. Did you see if Mr. Hicks had paid for any of  
9 those utility bills by check? We didn't do that. And  
10 that would have been futile because we know from  
11 Mrs. Hicks he didn't even have a checking account. Did  
12 you see with the company if there was one of those, and  
13 we know in our experience, those voice recordings when  
14 you have to switch utility service? We didn't do that.  
15 Well, their failure to do that, to follow through and to  
16 give you that evidence can't be construed against  
17 Mr. Hicks. It's got to be construed against the party  
18 with the burden, the government. Keep in mind  
19 reasonable doubt.

20 So look, of course he went there. Of course  
21 he was there on occasion. Maybe often. Doesn't mean he  
22 lived there. And, again, being merely present in a  
23 place where drugs are kept and stored doesn't make one  
24 guilty. Even if the person has knowledge. And you  
25 heard the instruction. They have to prove intent. And

1 in this case they cannot. They execute the search  
2 warrant and Mr. Hicks is up in the bedroom. Took a  
3 shower. Again, 32-year-old male, is it that uncommon,  
4 that far fetched, that beyond our grasp that a  
5 32-year-old man after coming home from working with  
6 appliances and doing things like that would grab a  
7 shower while he's baby-sitting his girlfriend's kids?  
8 Not at all. They execute the search warrant. Does he  
9 run? Does he struggle? Does he flee? Do they see him  
10 over by that night stand closing it? No. What's he  
11 do? He says what's going on, what's going on? He's  
12 calm and he's cooperative. The door on that drawer is  
13 closed. And let's deal with it this way, the ammunition  
14 first.

15 Keep in mind again about trying too hard. The  
16 night stand is closed and they want you to believe they  
17 open it up and they find his cell phone. And you heard  
18 when I believe Trooper Long -- again your memory  
19 controls -- testified he first said that was an accurate  
20 depiction of how he saw that drawer when it was opened.  
21 And that's the one that you got in the blown up version,  
22 with that cell phone almost touching that box of  
23 ammunition. And you saw the time of 8:22. But then you  
24 know or you find out that four minutes earlier, there  
25 was another picture, and that's Defendant's Exhibit 1.



1 And it shows four minute earlier that phone was nowhere  
2 near that box of ammunition. They want you to believe  
3 -- and the phone is hidden under a holster. They want  
4 you to believe Mr. Hicks came home from school, must  
5 have taken his holster off, put it down, left bullets  
6 exposed but hid that cell phone of his. How do we even  
7 know whatsoever that that phone was in there when they  
8 found it? Why didn't they take a picture of it when it  
9 was up there? Is this the original picture? Well, the  
10 government wants to talk about common sense. Would  
11 someone hide their cell phone under a holster and flop  
12 some Polaroid pictures down over it? No. What they  
13 gave you is the big blown up picture, with what is  
14 purportedly his cell phone touching right up against the  
15 ammunition.

16 And let's talk about the fingerprints. The  
17 government mentions CSI. Well, we're not asking Horacio  
18 and his crew to pull a needle out of a haystack. This  
19 is fingerprinting. This is fingerprinting. Don't you  
20 think Trooper Silvia conducted the tests because he  
21 expected he would find something? Ten percent? That's  
22 ten out of a hundred. He had almost 70 items.  
23 Nothing.

24 So they don't have Mr. Hicks in possession of  
25 a firearm. They search that car and they find his

1 school books, but they don't find any firearm that would  
2 match any caliber of this ammunition, they don't tell  
3 you if the holster fit him. You don't have the holster  
4 here. All they want to tell you is his cell phone was  
5 in there. And again, look at the position of the  
6 money. All this cash lying around. The money's tucked  
7 under the holster in that picture. Then all of a  
8 sudden, look at that. Touching the phone, right out in  
9 plain view.

10 So Trooper Silvia talks about this fuming  
11 technique. This is an advanced technique. It's not  
12 CSI. It's a technique where super glue is vaporized,  
13 bonds to a surface, and they're able to find a print.  
14 And most prints, at least in his training and  
15 experience, have an indefinite shelf life. Well, what  
16 are good surfaces? Metal is one because it's hard and  
17 smooth. And he said paper was an excellent one. Well,  
18 do we have any fingerprints from the Federal Cartridge  
19 box? No. Did you even test the Federal Cartridge box?  
20 No. Why didn't you do that? Well, probably because the  
21 investigator mishandled it and testing would have been  
22 futile. And I'm paraphrasing his words. Again, who is  
23 that construed against? Mr. Hicks who has no burden and  
24 is presumed innocent or the party with the burden, the  
25 government? They mishandled evidence so they couldn't

1 get a fingerprint off of it? What about all the bullets  
2 in that box? What about these shell casings? What  
3 about these? What about the watches?

4 Do you really believe they didn't find one  
5 single latent print in 70 items examined? Or do you  
6 really believe because they had a card with his known  
7 fingerprint sample on it, they just couldn't find one  
8 that matched him. Seventy items in a house they claim  
9 he lives in, not one item of contraband had a print that  
10 they could compare to his? What's the purpose of  
11 Trooper Silvia even doing that if that's his results.

12 No evidence Paul Hicks ever possessed a gun.  
13 No one ever saw him with a gun. No one ever searched  
14 the car and found a gun. These bullets, if you believe  
15 were there, were merely present. There is no evidence  
16 whatsoever to link them to him except the cell phone.

17 Now, the cell phone again, there is an  
18 inference that that cell phone wasn't even in that  
19 drawer and that, quite frankly, they knew they didn't  
20 have evidence and were trying to too hard. Cell phone  
21 was in his name. Did they do any follow-up on that?  
22 How do they know he made the calls? Those 160 calls.  
23 Did you call them and find out who they were? Did you  
24 have any conversation? Did you follow up with Nextel  
25 and see if Mr. Hicks actually signed up for this? We

1 know, I think it's a fair inference, that Miss Heywood  
2 or Miss Yarrell, both names were thrown out in trial,  
3 had no problem putting things in his name. But even if  
4 it was in his name, even if it was in his name, after  
5 the date of arrest it's still being used. And there was  
6 some evidence, well, in investigations an officer might  
7 grab the phone and use it and try to make some of these  
8 calls. You're going to see some of the calls back in  
9 February were 47 minutes long.

10 There is no evidence whatsoever, keeping in  
11 mind reasonable doubt and who has the burden of proof,  
12 that Mr. Hicks ever possessed anything in this drawer.

13 So we go to the drugs in the house. Again,  
14 he's got the three prior convictions, but you talk about  
15 trying too hard. Let's -- the convictions are from  
16 1996, 1995 and 1991, the oldest one being 15 years old.  
17 What's that really tell you? That in the past he had  
18 involvement with it, would know what it looked like if  
19 he saw it? Sure. But they can't argue that that shows  
20 that he had the intent to exercise dominion and control  
21 over these drugs and distribute them. All they can show  
22 is that he was present in a home where drugs were  
23 found.

24 Now, there's some dispute as to who lived  
25 there and who didn't live there, but certainly there's

1 evidence that other male individuals -- and, again,  
2 there is no gender bias here, females and we know from  
3 Trooper Telford can also be involved in the distribution  
4 of drugs. But we know Sean Yarrell went there, we know  
5 Aaron Heywood. We don't know exact dates and Miss Hicks  
6 certainly didn't know exact dates, but we know Aaron  
7 Heywood went there. And Trooper Telford, who arrested  
8 Aaron Heywood for narcotics knows that Aaron Heywood  
9 went there, and we know Aaron Heywood was the brother of  
10 Renee Heywood. So there are certainly other people that  
11 had access to that house.

12 But again, it's not our burden. We've got the  
13 presumption of innocence. It's not our burden to prove  
14 these drugs belonged to someone else. It's their burden  
15 to prove they belonged to him, either exclusively or  
16 jointly. Where's the proof that they belonged to him  
17 jointly? Well, you got that tape. And again, when you  
18 went through this screening process, you're really going  
19 to have to call upon your duty and oath as an honor.  
20 You swore that you could be fair. You swore you  
21 wouldn't base your decision collectively and  
22 individually as a jury on bias, like or dislike, because  
23 certainly there's dislikable things on that tape. But  
24 keep in mind again, the government's case. That tape is  
25 a year before this. A year before this. In the tape he

1 said many things. And you don't need Trooper LeVangie  
2 to tell you what was being spoken about. No one's going  
3 to insult your intelligence about powder and raw food  
4 and cooked food and money and quantities. Certainly a  
5 year earlier there is some evidence that Mr. Hicks in an  
6 exacerbated state, probably under a lot of stress,  
7 called his girlfriend, Renee Heywood, probably said some  
8 things that aren't very palatable, but you don't convict  
9 on character. What probative value does that have from  
10 a year earlier? Where's the evidence that whatever  
11 happened back then didn't cease? Where's the evidence  
12 that this was an ongoing, jointly held operation by  
13 Mr. Hicks and Miss Yarrell? There isn't none. Trooper  
14 Telford did some periodic drive-bys, didn't really see  
15 anything of note. You don't have any evidence that what  
16 happened a year before was what happened a year later.  
17 In fact, what did Mr. Hicks do when he got out of jail?  
18 Hardly the profile, and you heard the expert testimony,  
19 he's going to school and he's going to school each and  
20 every day and he's learning about appliances. And his  
21 mother who had that contract with him testified. Now,  
22 again, you judge credibility. Don't you think she was  
23 candid and forthright and credible? And it's a jury  
24 question, it's not for me to tell you. But he got up  
25 every day and went to school.

1           The items that they found, again, think about  
2     trying too hard. They find digital scales in a kitchen,  
3     in a cabinet. Now you heard the profiles of these  
4     people that distribute drugs and these delivery  
5     services. Fairly sophisticated. They protect  
6     themselves, they make arrangements with money, make  
7     arrangements for guns. They know how to insulate  
8     themselves. But the government on behalf of the  
9     officers who conduct the investigation want you to  
10    believe that Paul Hicks, now we know he has this prior  
11    knowledge from these 15-year-old convictions, would put  
12    tools of the trade, scales, in a cabinet, close the door  
13    and would leave a bill in his name right next to the  
14    scales. That is not on training experience consistent  
15    with someone insulating themselves, protecting  
16    themselves or running a sophisticated drug operation or  
17    selling drugs out of that house. And think of these  
18    utility bills. It seems wherever something popped up, a  
19    box of sandwich bags or packaging materials or scales,  
20    wherever something was found would pop up one of these  
21    mystery utility bills right next to it. As if someone's  
22    saying for all the world to say these are mine.  
23    Ridiculous. It's absurd. You want to talk about common  
24    sense and all this training and experience, why would  
25    someone do that? They would not.

1           The Glad sandwich bag. No fingerprints on  
2           that connecting Mr. Hicks to them. None of the  
3           packaging materials. No fingerprints on those. The  
4           scales. Hard plastic. You'll have them in evidence. A  
5           good surface for a fuming technique fingerprint. Not  
6           one fingerprint that can match Mr. Hicks.

7           Trooper LeVangie testified in a way that I'll  
8           concede is favorable to the government, but in a way  
9           I'll tell you is the way he's testified his last 300  
10          times. Always testifies favorable to the government.  
11          And what probative value can you give that? He didn't  
12          come in and tell you what a generic drug operation looks  
13          like. He came in, he was briefed, he knew the exact  
14          details about this case. And then he profiled, he  
15          mirrored the generic drug deal to look like this case.  
16          Isn't that obvious? He talked about, well, they  
17          sometimes arm themselves for security. But then they  
18          lend their guns out. Well, because he knew that there  
19          was ammunition found but no gun. And that's all  
20          assumption and speculation. Even he admits it's not a  
21          science. There's guesswork. And you don't convict  
22          beyond a reasonable doubt on guesswork.

23          Then he talked about the cash and people  
24          securing lawyers. And he admitted he heard the  
25          transcript about getting a thousand dollars to the



1 lawyer. Again, a year earlier. What is the evidence?  
2 There is no evidence. It is speculation. It is  
3 assumption.

4 Now, you don't have to like Mr. Hicks. That's  
5 not part of the equation, like and dislike. In fact,  
6 you don't even have to like your verdict. You don't go  
7 in there collectively with the thought we can't let  
8 someone maybe get away with something. That's not what  
9 you do. Your oath is to hold them to their burden of  
10 proof beyond a reasonable doubt. I would submit to you  
11 in this case they have not met that burden. If you  
12 consider all of the evidence, or better put lack  
13 thereof, and you consider it in that context of  
14 reasonable doubt and the presumption of innocence, the  
15 only verdicts you'll be able to come back with as a  
16 matter of law are not guilty. Thank you.

17 THE COURT: Mr. Mitchell, for a brief  
18 rebuttal.

19 MR. MITCHELL: Thank you, your Honor.

20 Ladies and gentlemen, Mr. Krowski's right.  
21 Reasonable doubt is a high burden. And for good  
22 reason. But it's the same burden every jury in a  
23 criminal trial has applied since the founding of the  
24 republic, in every state throughout this country. And  
25 you are no less qualified to apply that standard in this

1 case.

2 Let's talk about the evidence. This is his  
3 cell phone. I mean, come on. Trooper Long turned this  
4 on, he read you the number. Can you do it yourself.  
5 We'll do it right now.

6 (Pause.)

7 I'm getting "Please wait," your Honor.

8 Well, while that's warming up, you saw Trooper  
9 Long testify and he had his own Nextel phone, knew how  
10 to get the number off the phone by hitting my  
11 information and he read the number to you right off the  
12 screen. And then he turned to the -- and then he turned  
13 to the photos -- excuse me, the phone records and  
14 said -- and read the number there. It's the same  
15 number. Who else was in the house? I'll leave it to  
16 you to do that in the jury room.

17 Who else was in the house? There are two  
18 children in the house. Phone call had just been made on  
19 that phone. There are no other adults around. It was  
20 his phone, his phone. There's nobody else around.  
21 There's no suggestion that we planted the cell phone in  
22 there. And there's a good reason why this one isn't  
23 blown up. Because you can't see what else is in there.  
24 This thing, and you heard the testimony of the officers,  
25 when they take photos of the search site, sometimes they

1 have to take things from different angles and pull  
2 things back. You can't make out the phone very well  
3 with the holster. You can't even make out the cash.  
4 You have to pull the holster back. You can see it's  
5 pulled back, it's draped over the drug. Maybe pulling  
6 it back it turned around, maybe they just straightened  
7 it out so everything was visible, but the key testimony  
8 was, and they all said this, corroborated testimony, no  
9 contradiction at all, that ammo box was in the front of  
10 the drawer. I asked them that specifically; they all  
11 said yes. Was that in the drawer? Yes. Ammo in front  
12 of it? Yes. Cash? Yes. These things were all there.  
13 There's no suggestion that anybody stuck a phone in  
14 there or magically materialized. Their testimony is  
15 consistent right down the line in terms of what was  
16 contained in that drawer. The drawer that was right in  
17 front of the defendant as he sat down, the first thing  
18 he did as he got out of the shower.

19 This surface isn't -- this a surface of a  
20 box. This is not -- this is not paper in the sense that  
21 this is paper. They're different. Just as that Arm &  
22 Hammer baking soda box has a gloss, so does that.  
23 There's no suggestion that somehow that they said that  
24 the reports which are in evidence that the fingerprint  
25 reports say negative just only because they're negative

1 as to him. They're negative as to everybody. It's  
2 entirely speculative that somehow they had it out for  
3 him and sort of changed the test to -- or didn't do  
4 certain tests because they wanted to convict. There's  
5 no evidence of that at all, ladies and gentlemen. It's  
6 entirely speculative.

7 Remember the testimony about what tests were  
8 done. Remember -- and remember that what he said was I  
9 didn't get any prints; I only get 10 percent of the  
10 prints. That's it.

11 Finally, ladies and gentlemen, listen to the  
12 tape in the jury room. You'll have the means to put in  
13 a tape. Ask yourselves if things were so different a  
14 year earlier. A year after he -- a year after this man  
15 told Renee Yarrell to sell cocaine on his behalf, the  
16 year after that happened, same girlfriend, same house,  
17 same drugs, which were hidden again, all the same method  
18 of distributing cocaine. Very little had changed in  
19 that year.

20 For all those reasons, ladies and gentlemen, I  
21 ask that you return verdicts of guilty. Thank you.

22 (Concluded closings at 1 p.m.)

23 THE COURT: Jurors, I'm going to keep you just  
24 a little bit longer and ask for your attention as I  
25 complete my instructions to you now. I'm going to talk

1 a little bit about your fact finding function. Remember  
2 I gave you the principles of what the facts are that you  
3 must find in order to find the charges proven. Now I'm  
4 going to talk a little bit about the process of  
5 considering the evidence and coming to conclusions about  
6 it.

7 We often say that jurors are the sole and  
8 exclusive judges of the facts of the case. You  
9 determine the weight, the value and significance, the  
10 meaning of the evidence you've heard. Where there are  
11 disputes about factual matters, you resolve them, so far  
12 as you are able, from the evidence that you have in the  
13 case. You must determine the facts without fear or  
14 favor, based solely on a fair consideration of the  
15 evidence.

16 Now, that means two things. Of course, first  
17 of all, it means that you are to be completely fair and  
18 impartial, swayed neither by prejudice nor sympathy,  
19 personal like or dislikes toward anyone involved in the  
20 case, rather your responsibility to judge the true  
21 meaning of the evidence in the case fairly and  
22 impartially. Of course the second important point is  
23 that your judgment must be based on the evidence that  
24 has been presented to you in the course of the case.  
25 You may not go beyond the evidence by speculating or

1 guessing what other things might also be true that  
2 weren't shown in the evidence, but rather your  
3 responsibility is to resolve the issues presented by  
4 your thoughtful consideration of what has been presented  
5 in the evidence.

6 Your conclusions should be those conclusions  
7 that the evidence directs you to. If you should have  
8 questions that you're wondering about that you can't  
9 find an answer to in the evidence, you have to leave  
10 those questions unanswered. You can't fill in any gaps  
11 by speculating or guessing or supposing. We ask you to  
12 think about the evidence, to evaluate it, and then to  
13 decide what value and meaning it has.

14 Let me just remind you what is not evidence.  
15 I said this at the beginning of the case. The lawyers'  
16 statements to you both in the openings and now in the  
17 closings are not part of the evidence. They sum it up  
18 for you, they try to give you a picture of the evidence,  
19 but in the end it's your own collective appreciation of  
20 the evidence that matters and not the lawyers' summaries  
21 of it. And the evidence, of course, is what has come  
22 from the testimony and the exhibits in the case.  
23 Nothing I have done with respect to the applying or  
24 enforcing the rules of evidence is anything by way of  
25 evidence. Nothing I've said -- of course nothing I say

1 in these instructions count as evidence. These  
2 instructions, as the evidence rulings, have their own  
3 purpose in the case, but it's not part of the evidence  
4 and you shouldn't give any consideration to that but,  
5 again, to the body of the evidence. And of course  
6 there's no significance in any sense from any of the  
7 evidentiary rulings I've made, as I described to you at  
8 the beginning of the case.

9 Now, you have some different categories or  
10 kinds of evidence. You have some stipulations. A  
11 stipulation, as I told you, is simply an agreement  
12 between the parties to this case that you may take as  
13 true a certain statement as contained in the  
14 stipulation. It takes it out of the range of being  
15 contested. You can accept those stipulated matters as  
16 true and give them whatever weight or significance you  
17 think those facts have in your deliberation.

18 You will have a number of exhibits. And  
19 you'll have those exhibits with you in the courtroom --  
20 in the jury room for your deliberations. And, again,  
21 you can give them whatever consideration, weight and  
22 value you think they fairly ought to have. Some of them  
23 you've seen briefly here in the courtroom. You may have  
24 a fuller opportunity to examine them, some of the  
25 documents in particular, in the jury room.

1           There are in evidence a couple of items of  
2     contraband, the cocaine and the ammunition. And what  
3     we'll do is we'll have the court security officer go  
4     with you when you first go in with those items and let  
5     you look at them as much as you want without discussion  
6     because you can't discuss in his presence. He'll then  
7     take them back for security reasons. If you ever want  
8     to see them again, just let him know and he'll bring  
9     them back to you. So we'll begin by having you take  
10    whatever time you want to look at those things. As to  
11    the other matters, you'll have the exhibits there for  
12    your own control and give them whatever consideration  
13    you think you ought to give them.

14           Now, there are, as has been noted to you, a  
15    couple of matters in the evidence about prior occasions  
16    when the defendant perhaps committed acts that may be  
17    similar to what he's charged with here. And it has been  
18    correctly pointed out to you you may not consider that  
19    evidence as tending to prove that because he did  
20    something wrong on a prior occasion, he must have done  
21    it wrong on the occasion that's at issue in the  
22    indictment. You cannot consider that evidence as  
23    tending to show that he has a tendency or a proclivity  
24    to commit the act and therefore he must be guilty. If  
25    you find him guilty, you must do it on the evidence that



1 is in the case and the meaning of that evidence.

2 Those things, those occasions which include  
3 some prior convictions as well as a tape recorded  
4 telephone conversation, those things can be considered  
5 by you for this limited purposes, that is, whether the  
6 government has shown that the defendant had the  
7 knowledge and intention, perhaps the means, to commit  
8 the offense that was -- that is at issue, the offenses  
9 that are at issue in the indictment. So those matters  
10 of evidence of prior similar acts can be considered as  
11 to whether the defendant acted knowingly and  
12 intentionally and not because of mistake, accident or  
13 some other innocent reason. And you may or may not draw  
14 any inference from that. I don't say there is an  
15 inference, but that's the purpose for the admission.  
16 Limited to that consideration. You may found it has no  
17 value as to that, or you may find it has value and give  
18 it some value. Then that's entirely up to you. What  
19 you may to do is find him guilty because he may have  
20 been guilty of some other crime on some other occasion.

21 Now, in addition to the exhibits, you have the  
22 testimony of witnesses who appeared in front of you.  
23 You've not only had the opportunity to listen to the  
24 witnesses and hear what they've had to say but you've  
25 had an opportunity to watch them while they testify.

1 You can take all of that into account in deciding the  
2 weight, value, significance of the testimony. Perhaps  
3 there's something about the way the witness answered  
4 questions that helps you decide how much weight or value  
5 to give that.

6 As you think about the evidence from any  
7 particular witness, you may find you find credible,  
8 reliable, meaningful just about everything that witness  
9 has said, perhaps just about nothing that witness has  
10 said or perhaps something in between. There's no  
11 automatic all-or-nothing rule. From any given witness  
12 you may find some things reliable, acceptable and  
13 meaningful and other things from the very same person  
14 are that less reliable, less worthy of your trust and  
15 credit. So that's a judgment you should make together  
16 as you talk about and go through the evidence and  
17 consider its value to you.

18 So what you can do is you can think of course  
19 about the content of the evidence itself. Is it the  
20 kind of thing that makes sense? Does it have the ring  
21 of truth, as we sometimes say, or is there something  
22 about it that leads you to be skeptical or cautious in  
23 accepting it?

24 You can consider how good the witness's memory  
25 may be for events. Some people may have better memories

1 than others. You can consider how, if it's about things  
2 that were done or observed, how good the witness's  
3 observations were in the first place. You can consider  
4 how good the witness is in retelling what happened.  
5 Some people may have a greater facility at retelling  
6 what they remember from prior occasions. All of those  
7 are the kinds of things you can consider about any  
8 particular witness.

9           You can consider any partiality that a witness  
10 might have toward one side or the other, any reason or  
11 motive or interest in the way the case comes out that  
12 might have influenced consciously or unconsciously the  
13 testimony of the witness. Obviously in every case there  
14 are people who are affiliated with one side or the other  
15 or both. And that doesn't automatically mean that they  
16 are not to be trusted or believed for that reason, but  
17 it's a fact you can think about as you decide whether to  
18 accept and rely on that particular testimony or not.

19           You ought to consider the evidence from each  
20 witness not only by itself or in isolation as if that  
21 was the only person to testify, but in relation to all  
22 the other evidence in the case. For example, sometimes  
23 you may when you first hear something think it sounds  
24 pretty good until then you hear something else from  
25 perhaps another witness and it doesn't sound so good

1 anymore. Or vice versa. Maybe you're a little bit  
2 skeptical at first about what one witness tells you and  
3 then you hear something later in the case or see  
4 something else in the evidence and you feel a little bit  
5 better about accepting that proposition. So, in other  
6 words, think of the evidence in its whole context, even  
7 as you evaluate particular parts of it.

8 We ask you to reason about the evidence, to  
9 think about what it means. Now, reasoning sometimes  
10 simply means making a decision whether to accept an  
11 assertion of fact or not, but sometimes it means  
12 deciding what conclusions can be drawn or inferences can  
13 be drawn from the available facts. And you may draw  
14 inferences from the evidence. An inference is simply a  
15 little step in reasoning. You have some information,  
16 some data, and on the basis of that information or data  
17 you draw an additional conclusion.

18 We say that facts can be proved in either of  
19 two ways, either by direct evidence or by indirect or  
20 circumstantial evidence. Direct evidence is essentially  
21 that kind of evidence where if you accept the piece of  
22 evidence, it directly tends to establish the fact. So,  
23 for example, suppose somebody on the stand were to  
24 testify it's raining outside. Now you'd have to decide  
25 whether that person was being truthful, had a basis for

1 knowing what the weather was and so on; but if he passed  
2 all those tests, you could decide to accept that  
3 testimony it's raining outside. That would be sort of  
4 direct proof, you accept the testimony as directly  
5 established.

6 Not all facts necessarily are provable that  
7 way. Suppose instead of having somebody say that we had  
8 somebody walk in the back of the courtroom with a rain  
9 coat on that was dripping water and shaking water off an  
10 umbrella that they were folding up. Nobody will have  
11 said anything about the weather, you won't have seen it  
12 yourself, but you have some other information from which  
13 you might draw an additional conclusion. In your common  
14 experience you might decide when somebody walks in  
15 apparently from outside in that condition that it's  
16 raining out. And if that's a reasonable conclusion to  
17 you, you may draw it. That's indirect proof or  
18 sometimes called circumstantial proof. The  
19 circumstances warrant, justify, lead you to draw an  
20 additional conclusion about something factual.

21 I point that out because sometimes you hear  
22 people in sort of casual conversation say that's just  
23 circumstantial evidence, that doesn't prove anything.  
24 Well, that statement's wrong literally. Circumstantial  
25 evidence does prove things. And if you think about it,

1 you probably rely on it rather heavily as you go through  
2 the day. If you walk into the kitchen and see steam  
3 coming out of the kettle on the burner, you know enough  
4 not to put your finger on the burner because you've  
5 drawn an inference about how hot the burner is from the  
6 steam. So circumstantial proof is a legitimate form of  
7 proving a fact. You do have to be careful. You have to  
8 be sure that the inference is one that is truly  
9 justified by the evidence, that the conclusion is one  
10 that should be drawn based on your common experience  
11 from those facts or data that you're relying on. And if  
12 you have a set of data or facts that seem to suggest  
13 alternate inferences, this could be true or this also  
14 could be true, you can't just pick one and not the other  
15 unless you have some factual basis or reason for  
16 choosing between them. So if there are equally probable  
17 inferences to be drawn, then you have to leave the  
18 inference undrawn. The evidence has to point you to one  
19 over the other.

20 Now, I told you at the very beginning, and I  
21 emphasize now because it's very important, that a  
22 person -- the fact that a person is charged with a crime  
23 is not evidence that the person has committed the crime  
24 charged. The fact that an indictment is returned  
25 against a person making those charges tends not at all

1 to prove that the fact that the person has done what the  
2 indictment alleges. The indictment is simply a manner  
3 or means of presenting the charge so that it can be  
4 tried in a full trial such as we have had. You will  
5 have a copy of the indictment in the room with you for  
6 your guidance so you can see what the charges are,  
7 perhaps organize your deliberations. But you should  
8 give no weight or consideration to the fact that the  
9 charge has been made. Your judgment about whether the  
10 defendant is guilty or not will be based on the evidence  
11 in the case and not on the fact of the indictment.

12 Every defendant, including this defendant,  
13 Mr. Hicks, is presumed to be innocent of the crime  
14 charged unless and until the government has proved by  
15 the evidence that he is guilty beyond a reasonable  
16 doubt. The burden of proof rests with the government.  
17 The defendant assumes no burden to prove that he is  
18 innocent. The question is never which side has  
19 convinced me but rather has the government convinced me  
20 beyond a reasonable doubt that the defendant is guilty.  
21 If the answer to that question is yes, then the  
22 government is entitled to your verdict of conviction.  
23 If answer is no, then the defendant is entitled to be  
24 and must be acquitted.

25 A defendant in a criminal case has a right

1 guaranteed by the Bill of Rights and our Constitution to  
2 choose not to testify in a case. You may not under any  
3 circumstances draw any inference or presumption against  
4 the defendant for his decision not to testify. You  
5 should not even discuss the matter. You are to decide  
6 the issues presented solely from your consideration of  
7 the evidence that has been given in the case.

8 Now, the burden placed upon the government to  
9 prove a defendant's guilt beyond a reasonable doubt is a  
10 strict and heavy burden, but it is not an impossible  
11 one. It does not require the government to prove a  
12 defendant's guilt beyond all possible, hypothetical or  
13 speculative doubt, but beyond a reasonable doubt. There  
14 are probably very few, if anything, in human affairs  
15 that be proved to absolute certainty, and the law does  
16 not require that. But the evidence must exclude in your  
17 minds any reasonable doubt about the defendant's guilt  
18 of the crimes he is accused of.

19 Now, a reasonable doubt may arise from the  
20 evidence produced or from a lack of evidence. And if  
21 you conclude the evidence may reasonably permit in its  
22 entirety either of two conclusions, one consistent with  
23 the defendant's guilt and one consistent with his  
24 innocence, then you must find the defendant not guilty.

25 Reasonable doubt exists when after you've



1 considered and weighed all the evidence using your  
2 reason and common sense, you cannot say that you have an  
3 abiding conviction, a settled conviction, of the truth  
4 of the charge. Conversely we say that a matter is  
5 proved beyond a reasonable doubt if after consideration  
6 of all the evidence you are left with a settled  
7 conviction that the matter is true and that you may rest  
8 your verdict upon it. A reasonable doubt is not  
9 speculation, supposition or suspicion. It is not an  
10 excuse to avoid the performance of an unpleasant duty,  
11 and it is not sympathy.

12 While the law does not require proof that  
13 overcomes every conceivable or hypothetical doubt, it is  
14 not enough for the government to show that the  
15 defendant's guilt is probable or likely, even if it's a  
16 strong probability. The government must establish each  
17 element of an offense by proof that convinces you and  
18 leaves with you no reasonable doubt and thus satisfies  
19 you that you can, consistently with your oath as jurors,  
20 base your verdict upon it.

21 Now, there are three counts. You should give  
22 separate consideration to each count. It may be as you  
23 deliberate that you are -- that you come to the same  
24 conclusion on each of the three counts, but there is no  
25 necessary reason why that must be so. You should give

1 separate and individual consideration to each of the  
2 three counts. Your verdict must be a unanimous one,  
3 whether it is guilty or not guilty; that is, you must  
4 deliberate with respect to each count until you have  
5 reached a unanimous verdict with respect to that count.

6 It is my practice to permit the jury to select  
7 their own foreman. So one of the first things I suggest  
8 you do is do that, appoint somebody who will act in the  
9 administrative office, I guess, as foreman. That person  
10 really has a couple of responsibilities. One is if in  
11 the course of your deliberations you have any questions  
12 about the law that you need to ask for further  
13 instruction on, that person would do the communicating  
14 with the court officer to let us know that's the case  
15 about the question.

16 If you have a question about my instructions  
17 and the law that applies that you can't resolve after  
18 talking about it among yourselves, then we invite you to  
19 ask that question. We'd rather have you get a  
20 clarification of what the law is than base your decision  
21 on an error of law. We cannot answer any questions  
22 about the meaning of the evidence or the facts of the  
23 case. Those matters are entirely within your  
24 responsibility and purview, and we have nothing to say  
25 or help you with in that respect. Questions of law,

1 yes; questions of fact or the evidence, no.

2 The other thing that the foreman will do is at  
3 the end when you have a verdict, sign the verdict slip.  
4 You will have a verdict slip, as you will see, which  
5 goes through Count One, Count Two, Count Three and asks  
6 for your verdict. And the foreman when that's completed  
7 will sign that.

8 Now, let me just see counsel before I ask you  
9 to deliberate.

10 (Conference at sidebar commenced.)

11 MR. MITCHELL: No objection.

12 MR. KROWSKI: Defendant's satisfied.

13 (Conference at sidebar concluded.)

14 THE COURT: Now, finally, let me just say that  
15 each juror is entitled to his or her own opinion and  
16 should in the end render a verdict which represents that  
17 juror's conscientious view of the evidence. Of course  
18 that doesn't mean that you don't listen to each other,  
19 talk with each other and deliberate collectively,  
20 present your own views, consult with one another and see  
21 whether you can, in your own individual, conscientious  
22 judgment come to a unanimous verdict.

23 We have, I expect it's already there, a lunch  
24 brought up to you. So you don't have to worry about  
25 that. That should be in there and you can begin with

1 that, of course, as you begin your deliberations.

2 So with that now, jurors, we ask you to  
3 withdraw, deliberate upon the evidence and return with  
4 your verdict.

5 THE CLERK: All rise for the jury.

6 (Jury withdrew 1:20 p.m.)

7 THE COURT: All right. We'll be in recess.

8 (Recessed, 1:22 p.m.)

9 (Court resumed.)

10 THE CLERK: All rise. Please be seated.

11 THE COURT: The jury sent a question, which I  
12 gather you've seen.

13 MR. KROWSKI: Yes, your Honor.

14 MR. MITCHELL: Yes, your Honor.

15 THE COURT: Do you have any comments or --

16 MR. MITCHELL: Your Honor, I would suggest  
17 reinstructing them on circumstantial evidence. It  
18 sounds like that's what they're looking for. I don't  
19 see any issue with doing that.

20 MR. KROWSKI: I would think reading verbatim  
21 from the instruction on circumstantial --

22 THE COURT: I didn't read verbatim the first  
23 time.

24 MR. KROWSKI: Well, I think -- and that  
25 probably raises, of course I don't have a realtime

1 transcript of it now, but I would ask that it be read  
2 verbatim or at least that we could discuss which parts  
3 were ad-libbed because --

4 THE COURT: The whole thing was ad-libbed.

5 MR. MITCHELL: That's pretty good.

6 THE COURT: I'll give them the elements of  
7 it. I don't think I have to go through the examples  
8 that I gave again of raining outside and so on, but I'll  
9 give them a shorter one. The second part of the  
10 question is "Is circumstantial evidence sufficient to  
11 determine guilt?" The answer is yes, so long as it is  
12 appropriately used and that they are sure of the  
13 inferences and that they are able to say at the end of  
14 the process of inferring that they are convinced beyond  
15 a reasonable doubt.

16 MR. KROWSKI: I'd object to it. I always  
17 think it's hazardous to answer a question that calls for  
18 a yes or no answer. The problem being is circumstantial  
19 evidence can be depending on -- but we don't know what  
20 they're thinking. I think you'd have to throw an  
21 explanation in there that would have to be as to all  
22 elements on each of the counts and reasonable doubt and  
23 those propositions still stand.

24 THE COURT: Well, I will caution them that if  
25 they are relying on proof by circumstantial evidence

1 that they must nevertheless be convinced beyond a  
2 reasonable doubt of the elements of the offense. No  
3 question.

4 Now, the other issue I have is they have also  
5 it says, "Please remind us about the elements of  
6 possession." And then that's crossed out.

7 MR. KROWSKI: I took that to be they no  
8 longer --

9 THE COURT: They've withdrawn that question.

10 MR. KROWSKI: That was my --

11 THE COURT: I can either ignore it, or maybe I  
12 can ask them whether they want that answered.

13 MR. MITCHELL: Well, if you bring them back  
14 out, I guess you could ask them.

15 MR. KROWSKI: You could inquire of the  
16 foreperson.

17 THE COURT: I don't know who it is. I can't  
18 read the signature. Okay, we'll bring them out.

19 THE CLERK: All rise for the jury.

20 (Jury entered courtroom, 3:35 p.m.)

21 THE CLERK: Please be seated.

22 THE COURT: Jurors, we have your question  
23 signed by the foreman, but I can't read the signature.  
24 Who's the foreman?

25 THE FOREMAN: I am.

1 THE COURT: You have two questions: "Please  
2 remind us about the definition of circumstantial  
3 evidence" and "Is circumstantial evidence sufficient to  
4 determine guilt?"

5 As I told you, the law accepts two methods of  
6 proving a fact, by direct evidence or by circumstantial  
7 evidence. Direct evidence is when the evidence itself,  
8 if accepted as reliable and truthful and so on, more or  
9 less by itself is a basis for believing a fact.  
10 Circumstantial evidence occurs when you have facts that  
11 you are satisfied are true and considering them and  
12 thinking about them, as I said you're entitled to do,  
13 you looking at that series of facts conclude that given  
14 those facts, something else is probably or likely also  
15 true. That's a general inference. In other words, you  
16 draw inference or a conclusion from the other facts. I  
17 gave you some illustrations. You have facts about the  
18 rain on the rain coat and on the umbrella and from that  
19 you draw a conclusion. Nobody has seen the rain, nobody  
20 said it's raining, but you have the conclusion that it's  
21 probably likely raining because there's what you see and  
22 you draw a conclusion from it or from the steam from the  
23 kettle and so on.

24 So all circumstantial evidence is is an  
25 inference or a conclusion that your minds are led to by

1 the evidence that you have already accepted as fact.  
2 That is to say, it's not an excuse for guessing or  
3 speculating. You can't make up a conclusion. But  
4 rather it's a conclusion that the evidence directs you  
5 to because in your experience, that inference is  
6 justified by the underlying data.

7 Circumstantial evidence is a method of proof  
8 in criminal cases, as in other cases, and a verdict of  
9 guilty may be based on circumstantial evidence. No  
10 question about that. You should be cautious that the  
11 inferences you propose to draw are those that are --  
12 that the evidence directs you to. Again, it's not an  
13 excuse for speculating or guessing. But if the evidence  
14 rationally leads you to draw an additional conclusion  
15 beyond what is directly evident, then you may do so.

16 You should be further cautioned that of course  
17 the burden of proof in this case is to prove the  
18 elements of the offense beyond a reasonable doubt. And  
19 so when you use circumstantial evidence by itself or in  
20 combination with direct evidence, at the end with  
21 respect to the elements of the offense you must be  
22 satisfied beyond a reasonable doubt that the government  
23 has proved the elements of the offense. You don't have  
24 to find every individual particular fact in a case  
25 beyond a reasonable doubt, but you have to be satisfied



1 at the end of the case that the government's charge  
2 against the defendant concludes the elements of the  
3 offense is proved beyond a reasonable doubt. I hope  
4 that is additional guidance which will help you in your  
5 deliberations.

6 Now let me just ask you, you also had  
7 originally apparently written "Please remind us about  
8 the elements of possession," and then you crossed that  
9 out. Are you satisfied as to that or do you need a  
10 further instruction with respect to what possession is?

11 Mr. Foreman?

12 THE FOREMAN: We're satisfied, your Honor.

13 THE COURT: You're satisfied, okay.

14 All right, I'll ask you to withdraw then and  
15 consider this instruction, as well as all the other  
16 instructions of course, and continue your deliberations.

17 THE CLERK: All rise.

18 (Jury withdrew, 3:40 p.m.)

19 (Recessed, 3:40 p.m.)

20 (Court resumed, 4:05 p.m.)

21 THE CLERK: All rise.

22 (Jury entered courtroom, 4:05 p.m.)

23 THE CLERK: Please be seated.

24 Will the jurors remain standing, Mr. Hicks  
25 remain standing. Everyone else can be seated.

1 Mr. Foreperson, has the jury agreed upon a  
2 verdict?

3 THE FOREMAN: Yes, we have.

4 THE CLERK: Can I have the form, please.

5 (Clerk hands verdict form to the Court.)

6 THE COURT: You may announce the verdict.

7 THE CLERK: In criminal action 05-10204, case  
8 of United States of America versus Paul Hicks, the  
9 verdict,

10 Count One: As to Count One charging the  
11 defendant with Possession of Ammunition By a Felon in  
12 violation of 18 U.S.C. Section 922(g)(1), we, the jury,  
13 find the defendant, Paul Hicks, guilty.

14 Count Two: As to Count Two charging the  
15 defendant with "possession of cocaine base with intent  
16 to distribute" in violation of 21 U.S.C. Section  
17 841(a)(1), we, the jury, find the defendant, Paul Hicks,  
18 guilty.

19 If you have the found the defendant guilty of  
20 Count Two, do you find beyond a reasonable doubt that  
21 the defendant, Paul Hicks, possessed five grams or more  
22 of cocaine base? Yes.

23 As to Count Three charging the defendant with  
24 Possession of Cocaine With the Intent to Distribute in  
25 violation of 21 U.S.C. Section 841(a)(1), we, the jury,

1 find the defendant, Paul Hicks, guilty.

2 Mr. Foreperson, is that your verdict?

3 THE FOREMAN: Yes.

4 THE CLERK: And so say you all.

5 (All jurors respond affirmatively.)

6 THE COURT: All right. The verdict shall be  
7 recorded.

8 Jurors, with your verdict in the case, your  
9 service as jurors is at an end and you are now  
10 discharged. If you'll withdraw into the room, I'll be  
11 in in just a minute to say an informal good-bye and  
12 thank you to you before you go on your way.

13 THE CLERK: All rise.

14 (Jury withdrew, 4:08 p.m.)

15 THE COURT: We'll set a date for sentencing.

16 MR. KROWSKI: Yes. Would the Court consider a  
17 January date? I can explain why.

18 THE COURT: Yes. That's where we're  
19 scheduling.

20 THE CLERK: Monday, January 22nd at 2:15 for  
21 sentence.

22 THE COURT: Make it 2:30.

23 THE CLERK: 2:30 on Monday, January 22nd.

24 THE COURT: All right. The defendant of  
25 course remains in custody until then. We'll be in

1 recess.

2 MR. MITCHELL: Thank you, your Honor.

3 THE CLERK: All rise. Court will be in  
4 recess.

5 (Adjourned, 4:10 p.m.)

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7 CERTIFICATION

8 I certify that the foregoing is a correct  
9 transcript of the record of proceedings in the  
10 above-entitled matter to the best of my skill ability.

11  
12 /s/ Shelly M Killian  
13 Shelly M. Killian RPR, CM, CRR  
14 Registered Professional Reporter  
May 19, 2008  
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